Tax Bulletin

September 2020

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Highlights

BIR Administrative Requirements

- Revenue Regulation No. 21-2020 provides the guidelines for the Voluntary Assessment and Payment Program ("VAPP") for Taxable Year 2018 under certain conditions. **(Page 6)**

Other BIR Issuances

- RR No. 22-2020 amends certain Sections of RR No. 12-1999, as amended by RR No. 18-2013 and RR No. 7-2018, relative to the Due Process Requirement in the issuance of Deficiency Tax Assessments. **(Page 9)**

- RR No. 23-2020 implements Section 6 of Republic Act ("RA") No. 11494, otherwise known as the "Bayanihan to Recover as One Act" on the repeal of tax on the Initial Public Offering ("IPO") of Shares of Stocks provided under Section 127(B) of the NIRC of 1997, as amended. **(Page 10)**

- RR No. 24-2020 implements Section 4 (uu) of RA No. 11494, otherwise known as the "Bayanihan to Recover as One Act" on the exemption from DST on Loans Extended or Credits Restructured. **(Page 10)**

- RR No. 25-2020 implements Section 4 (bbbb) of RA No. 11494, otherwise known as the "Bayanihan to Recover as One Act" relative to the Net Operating Loss Carry Over ("NOLCO") under Section 34 (D) (3) of the NIRC, as amended. **(Page 11)**

- Revenue Memorandum Order (RMO) No. 30-2020 amends RMO No. 16-2020 prescribing the allocation of the Calendar Year ("CY") 2020 BIR Collection Goal by Implementing Office. **(Page 11)**

Banks and Other Financial Institutions

BSP-Issued Securities (Bills and Bonds)

- Circular No. 1095 publishes Monetary Board Resolution 1108 amending the provisions of the Manual of Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) to operationalize the additional instrument for BSP monetary operations, particularly the inclusion of the BSP-issued Securities (Bills and Bonds), under the Interest Rate Corridor System. **(Page 12)**

Reconciliation Statement on Demand Deposits

- Circular No. 1096 publishes Resolution No. 1151 of the Monetary Board amending the MORB and MORNBFI to implement semestral submission of the Reconciliation Statement by banks and quasi-banks (QBs) on their Demand Deposit Accounts (DDAs) maintained with the BSP. **(Page 12)**

Trust Corporations

- Circular No. 1098 publishes Resolution No. 1081 dated 27 August 2020 approving the guidelines on the distribution of trust products of trust corporations (TCs) and related amendments to the MORNBFI T-Regulations on the establishment of branches and marketing offices. **(Page 12)**

Ceiling on Interest or Finance Charges for Credit Card Receivables

- Circular No. 1098 publishes Resolution No. 1185 dated 17 September 2020 approving the following amendments to the MORB and MORNBFI on the ceiling on interest or finance charges for credit card receivables. **(Page 13)**

Capital Adequacy Ratio Report

- Memorandum No. M-2020-067 provides for Transitory Guidelines on the Reporting of Certain Exposures in the Capital Adequacy Ratio (CAR) Reports. **(Page 13)**

"Bayanihan to Recover As One Act"

- Memorandum No. M-2020-068 requires for the immediate compliance with Section 4 (uu) of the R.A. No. 1149 on the "Bayanihan to Recover As One Act", which took effect last 15 September 2020. **(Page 14)**

Personal Equity and Retirement Account (PERA)

- Memorandum No. M-2020-069 provides for amendments to the reporting template of PERA in compliance with the basic security deposit (BSD) requirement. **(Page 15)**

Annual Service Fees for Banks and Non-Banks with Quasi-Banking Functions

- Memorandum No. M-2020-071 provides for guidelines on the computation and collection of the 2020 Annual Supervisory Fees (ASF) for Banks and Non-Banks with Quasi-Banking Functions (NBQBs), effective immediately. **(Page 15)**

Annual Service Fees for Non-Stock Savings and Loan Associations and Trust Corporations

- Memorandum No. M-2020-071 provides for guidelines on the computation and collection of the 2020 Annual Supervisory Fees (ASF) for Non-Stock Savings and Loan Associations (NSSLAs) and TCs. **(Page 16)**

Bureau of Customs

ASEAN Wide Self-Certification Scheme

- Customs Memorandum Order (CMO) No. 24-2020 provides for the guidelines in the implementation of the ASEAN Wide Self-Certification Scheme (AWSC). **(Page 17)**

Guidelines on Refund and Tax Credit

- CMO No. 25-2020 applies to refund for overpayment or erroneous payment and other refund of duties and taxes as implemented under Customs Administrative Order (CAO) 4-2019, and shall likewise apply to payment of refund arising from final decisions in protest cases, judicial decisions, special laws, and Executive or Presidential issuances, as well as payment of refund claims duly approved and endorsed by the Bureau of Internal Revenue (BIR) to the BOC. **(Page 19)**

Board of Investments

Compliance with Pre-Registration Requirements

- BOI MC No. 5 prescribes the guidelines on compliance with the pre-registration requirements for approved applications for BOI registration to effectively carry out the intent and purposes of Executive Order No. 226, as amended, and to ensure the timeliness of compliance with the pre-registration requirements. **(Page 23)**

PEZA

- PEZA MC No. 46 issues guidelines on the receiving of new and late renewal Residual Waste Hauler registration applications. **(Page 24)**

SEC Filing, Payments and Other Deadlines

Guidelines in the Filing, Investigation and Resolution of Complaints for Violation of the Right to Inspect and/or Reproduce Corporate Records

- SEC MC No. 25 provides guidelines in enforcing the right to inspect and/or reproduce records of any director, trustee, stockholder and members of a corporation under Section 73 of R.A. No. 11232 or the Revised Corporation Code of the Philippines (RCC) and the procedure for the conduct of investigation for violation of such right. **(Page 24)**

Other SEC Updates

Guidelines in the Implementation of a Risk-Based Approach to Anti-Money Laundering Combating the Financing of Terrorism (AML/CFT) and Adoption and Development of a Risk Rating System for SEC Covered Persons

- SEC MC No. 26 provides the guidelines in the implementation of its Risk-Based Approach to AML/CFT and resolves to adopt an AML/CFT Risk Rating System (ARRS) to be employed in the conduct of its on-site examinations of covered persons. **(Page 27)**

- SEC provides guidelines for the implementation of the mandatory grace period for all loans pursuant to the "Bayanihan to Recover as One Act". **(Page 33)**

Supreme Court Cases

- In a tax-free exchange involving a controlled corporation under Sec. 40(C)(2) of the Tax Code, the element of control is satisfied even if one of the transferors already owns at least 51% of the shares of the transferee corporation, as long as after the exchange, the transferors, not more than five, collectively increase their equity in the transferee corporation by 51% or more. **(Page 34)**

- The creation of nationality-based license types under the implementing rules of the Contractors' License Law is void. The law does not limit the entities who can engage in the construction industry to Filipino citizens. Engaging in the construction business is not tantamount to the practice of a profession, which is regulated under the Philippine Constitution. **(Page 35)**

Court of Tax Appeals Cases

Refund/ Issuance of Tax Credit

- Double taxation means taxing the same property twice when it should be taxed only once; that is, taxing the same person twice by the same jurisdiction for the same thing. Otherwise described as "direct duplicate taxation" the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character. **(Page 36)**

- Strict compliance with the 120+30-day periods is necessary for a refund claim of input VAT to prosper. **(Page 37)**

- RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis. **(Page 38)**

- An appeal to a denial of a taxpayer's administrative claim must be made within 30 days from the time the CIR failed to act on its administrative claim within 120 days from submission of complete documents in support of its claim. **(Page 39)**

- Capital Gains Tax (CGT) is imposed even on involuntary sales. Local Government Units (LGUs) are exempt from the payment of documentary stamp tax (DST) and registration fees with respect to registration of papers or documents on sale of delinquent real property. **(Page 40)**

- A taxpayer cannot claim a refund of CGT paid on a rescinded contract to sell considered as a cash sale. **(Page 41)**

Assessment

- All audit investigations must be conducted by a designated Revenue Officer (RO), duly authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA and that in case of re-assignment or transfer of cases to another RO, it is mandatory that a new Letter of Authority (LOA) shall be issued in favor of the latter. **(Page 42)**

- Failure to strictly comply with the notice requirements prescribed under Section 228 of the Tax Code, and Revenue Regulations No. 12-99 is tantamount to denial of due process. As a result, the assessments issued in this case are void, and all the proceedings and orders emanating from there are likewise void. As a rule, a void assessment bears no valid fruit. **(Page 43)**

- The concerned taxpayer must be fully apprised of the factual bases of the assessments, and must not be left unaware on how respondent or his authorized representatives appreciated the explanations or defenses raised in connection with the assessments. Tax assessments issued in violation of the due process rights of a taxpayer are null and void. Furthermore, a void assessment bears no valid fruit. **(Page 44)**

- It is only the Commissioner of Internal Revenue (CIR) or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made. **(Page 45)**

- A LOA is synonymous to a Contract of Agency such that a LOA without the name of the revenue officer who will conduct the audit and assessment of the taxpayer be valid. **(Page 46)**

- Deficiency tax assessments issued without a valid LOA are void. **(Page 47)**

Local Business Tax (LBT)

- Association dues received by condominium corporations do not constitute gain or profit that is subject of LBT since these are collected for the benefit of the unit owners and incidental to the condominium corporation's responsibility to maintain the common areas. **(Page 48)**

Documentary Stamp Tax (DST)

- A deposit on future subscription is not subject to DST as it is received by a corporation to be applied as payment for future issuance of shares, an event which may or may not happen. As trust fund, the deposit is still withdrawable by the subscriber at any time before the issuance of the corresponding shares of stock. Its nature is not the same as a loan. **(Page 49)**

BIR Administrative Requirements

RR No. 21-2020 provides the guidelines for the VAPP for Taxable Year 2018 under certain conditions.

RR No. 21-2020 issued on 4 September 2020

- These regulations shall cover all internal revenue taxes for the taxable year ending in 31 December 2018, and fiscal year 2018 ending on the last day of the months of July 2018 to June 2019, including taxes on one-time transactions ("ONETT"), such as estate tax ("ET"), donor's tax ("DT"), capital gains tax ("CGT"), as well as ONETT-related creditable withholding tax ("CWT") or expanded withholding tax ("EWT"), and documentary stamp tax ("DST").

- Any person liable to pay the above-mentioned internal revenue taxes for the said specific period/s, due to inadvertence or otherwise, erroneously paid tax liabilities or failure to pay taxes may avail of the VAPP, except those failing under the following circumstances:

    1. Taxpayers who have already been issued a Final Assessment Notice ("FAN") that has become final and executory, on or before the effectivity of these regulations;

    2. Persons under investigation as a result of a verified information filed by a Tax Informer with respect to deficiency taxes that may be due out of such verified information;

    3. Those with cases involving tax fraud filed and pending in the Department of Justice or in the courts; and

    4. Those with pending cases involving tax evasion and other criminal offenses under Chapter II of Title X of the NIRC of 1997, as amended.

- Qualified persons can apply and avail of the benefits of the VAPP until 31 December 2020, unless extended by the Secretary of Finance.

- The taxpayer-applicant shall signify his intention to avail the benefits under these regulations and shall submit the following requirements:

    1. Mandatory Requirements:

        - Duly accomplished Application Form or BIR Form No. 2119

            a. Original copy for Large Taxpayers ("LT") Office / Revenue District Office ("RDO") and duplicate for taxpayer's copy.

        - Payment Form or BIR Form No. 0622 with proof of payment

            a. Original copy for LT Office / RDO and duplicate copy for the taxpayer and triplicate for the collecting agent.

    2. Additional Requirements:

        - Filed tax returns, proof of payments of taxes paid in 2017 and 2018, and Audited Financial Statements for the covered taxable year for those availing of the program under Section 9a.

        - Copy of remittance returns and proof of payment of final and creditable withholding taxes for taxpayers availing of the program under Section 9b.

        - Copy of duly paid BIR Form 0605 stamped either by the Authorized Agent Banks (AABs) or Revenue Collection Officers (RCOs) signed by the LT Office / RDO where the taxpayer is registered and proof of payment representing settlement of previous deficiency tax, with or without an assessment notice, if any, covering the taxable period under Section 3.

        - Duly accomplished ONETT tax return/s (BIR Form Nos. 1800, 1801, 1706, 1707, 2000 – OT 0619-E) and corresponding documentary requirements for the transaction of taxpayers availing of the program under Section 9c.

- The above requirements can be filed personally or through courier service with the LT Office/RDO having jurisdiction over the taxpayer, which will be evaluated by the Revenue Officer within 30 working days from receipt of the Application, Payment Form and other documents submitted.

- In case of defects or deficiencies in the availment, the taxpayer shall be given an additional 10 working days from receipt of notification/e-mail to rectify the defects and comply with the deficiencies. Otherwise, the application shall be denied.

- The voluntary payment must be made in cash as a condition to avail of the privilege.

- The Certificate of Availment shall be issued within three working days from the approval of the application, which shall be the taxpayer's proof of the availment of the VAPP, compliance with the requirements, and entitlement to the privilege granted.

- A taxpayer shall not be entitled to avail the privilege under these regulations if there is non-submission or submission of erroneous/incomplete/falsified information concerning the VAPP. However, the voluntary payments made may be applied against any deficiency tax liability for the taxable year 2018 in case of audit/investigation.

- The amount of taxes to be paid as a condition to avail the privilege shall be determined by the following schedule under Section 9 of these regulations:

    1. For Income Tax ("IT"), Value-Added Tax ("VAT"), Percentage Tax ("PT"), Excise Tax ("ET"), and DST other than DST on ONETT:

Increase/ Decrease in the Total Taxes Due from 2017 to 2018 (A)	Amount of Voluntary Tax Payment Whichever is higher of (B)	Minimum Amount (C)
Net increase of not more than 10%	3% of 2018 gross sales or 7% of 2018 taxable net income	Individuals, estates, and trust - P75,000
Net increase of more than 10% up to 30%	2% of 2018 gross sales or 6% of 2018 taxable net income	Corporations – a. With subscribed capital of more than P50 million – P1,000,000 b. With subscribed capital of more than P20 million up to P50 million – P500,000 c. With subscribed capital of more than P5 million up to P20 million – P250,000 d. With subscribed capital of P5 million and less – P100,000 Other juridical entities, including but not limited to cooperatives, foundations, general professional partnerships – P75,000
Net increase of more than 30%	1% of 2018 gross sales or 5% of 2018 taxable net income	
Net decrease of not more than 10%	4% of 2018 gross sales or 8% of 2018 taxable net income	
Net decrease of more than 10%	5% of 2018 gross sales or 9% of 2018 taxable net income	

    - The amount to be paid must be the higher amount in column B, but in no case should be less than the amount in column C.

    - The total taxes dues in 2017 and 2018, for purposes of the above schedule, refer to the sum of all tax due per tax return (IT, PT, ET, and DST) and net VAT payable before deducting any CWT, quarterly payment, or advance payment.

    - The gross sales and taxable net income shall be based on the Annual Income Tax Return for the taxable year ending 31 December 2018 and Fiscal Year 2018 ending on the last day of July 2018 to June 2019.

2. For Final Withholding Taxes (on Compensation, Fringe Benefits, etc.) and CWT other than CWT on ONETT, the amount to be paid shall be 5% of the total basic withholding tax remittance for the taxable year 2018.

    - For VAPP availment under Sections 9.a and 9.b, the taxpayers must apply for all registered taxes indicated in order to avail of the privilege of "NO AUDIT" under these regulations.

3. For Taxes on ONETT, such as ET, DT, CGT, ONETT-related CWT/EWT, and DST, the amount to be paid shall be the basic tax due of the unfiled tax return/unpaid tax due plus 5%.

- A taxpayer with a duly issued Certificate of Availment shall not be audited for 2018 for the tax types covered by the availment. In case the taxpayer is being audited for the covered taxable period, the same shall be suspended upon availment of the VAPP while the application is under evaluation. The audit shall resume if the availment was found to be invalid.

- Taxpayers who failed to file tax returns and/or pay their taxes for 2018 under Section 9.a. can apply for VAPP, provided that the unfiled tax returns shall be filed first and/or unpaid taxes plus penalties for late filing and payment shall be paid first.

- Any payment made under these regulations is construed as a waiver of the taxpayer's right to claim for refund or credit, notwithstanding the collection from erroneous payment, unless they intend to maintain the refund claim by excluding in their availment the specific tax type for which they are pursuing the claim for tax credit/refund.

- The voluntary payment shall not be deemed as admission of fraud on the part of the taxpayer in the declaration of its taxes and/or there was an intention to pay the tax erroneously.

- These regulations shall take effect after 15 days immediately following its publication in any newspaper of general circulation.

(Editor's Note: The RR was published in the Philippine Star*, pages 4-5, on 5 September 2020, and took effect on 20 September 2020)*

Other BIR Issuances

RR No. 22-2020 amends certain Sections of RR No. 12-1999, as amended by RR No. 18-2013 and RR No. 7-2018, relative to the Due Process Requirement in the issuance of Deficiency Tax Assessment.

RR No. 22-2020 issued on 16 September 2020

- These regulations provide for the preparation of a Notice of Discrepancy ("NOD"), instead of Notice of Informal Conference.

- The following shall be the amendments to the issuance of a deficiency tax assessment:

    1. If a taxpayer is found to be liable for deficiency tax or taxes in the course of an investigation conducted by a Revenue Officer, the taxpayer shall be informed through NOD.

    2. The NOD aims to fully afford the taxpayer with an opportunity to present and explain his side on the discrepancies found.

3. The Revenue Officer who audited the taxpayer's records shall, among others, state in the initial report of investigation his findings of discrepancies which will be the basis of the initial report of investigation.

4. The taxpayer shall be informed, in writing, by the RDO or by the Assessment Division/Regional Investigation Division, as the case may be, of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of the "Discussion of Discrepancy," which shall in no case extend beyond 30 days.

5. If the taxpayer disagrees with the discrepancy/discrepancies, he must present an explanation and provide documents to support his explanation within 30 days after receipt of the NOD.

6. The investigating officer shall endorse the case to the reviewing office for the issuance of Preliminary Assessment Notice within ten (10) days from the conclusion of the Discussion, if taxpayer is still liable for deficiency taxes, and does not address the discrepancy by payment of the deficiency taxes, or does not agree with the findings.

7. Failure on the part of the Revenue Officers to comply with the periods indicated shall be meted with penalty as provided by existing laws, rules, and regulations.

- These regulations shall take effect after 15 days immediately following its publication in any newspaper of general circulation.

(Editor's Note: The RR was published in Malaya Business Insight*, p. A11, on 17 September 2020, and took effect on 2 October 2020)*

RR No. 23-2020 implements Section 6 of RA No. 11494, otherwise known as the "Bayanihan to Recover as One Act" on the repeal of tax on the IPO of Shares of Stocks provided under Section 127(B) of the NIRC of 1997, as amended.

RR No. 23-2020 issued on 30 September 2020

- Upon the effectivity of RA No. 11494, Section 127 (B) of the NIRC, as amended, is hereby repealed, thus, every sale, barter, exchange, or other disposition of shares of stocks through IPO in closely held corporations shall no longer be subject to the tax.

RR No. 24-2020 implements Section 4 (uu) of RA No. 11494, otherwise known as the "Bayanihan to Recover as One Act" on the exemption from DST on Loans Extended or Credits Restructured.

RR No. 24-2020 issued on 30 September 2020

- These regulations shall cover all extensions of payments and/or maturity periods of loans, including but not limited to salary, personal, housing, commercial and motor vehicle loans, amortizations, financial lease payments and premium payments, as well as credit card payments falling due on or before 31 December 2020, including the extension of maturity periods that may result from the grant of grace periods for these payments, whether or not such maturity period originally fall due on or before 31 December 2020, as contemplated under Section 4 (uu) of RA No. 11494.

- All credit restructuring, micro-lending, including those obtained from pawnshops, and extensions thereof made on or before 31 December 2020 are also covered under these regulations.

- There shall be no additional DST imposed on the term extensions and credit restructuring, micro-lending, including those obtained from pawnshops and extensions thereof granted by covered institutions for loans falling due on or before 31 December 2020.

- Interbank loans and bank borrowings shall be subject to DST imposed under Section 179, 195 and 198 of the NIRC, as amended.

RR No. 25-2020 implements Section 4 (bbbb) of RA No. 11494, otherwise known as the "Bayanihan to Recover as One Act" relative to the Net Operating Loss Carry Over ("NOLCO") under Section 34 (D) (3) of the NIRC, as amended.

RR No. 25-2020 issued on 30 September 2020

- These regulations shall cover the deduction from gross income of the NOLCO incurred by businesses or enterprises for the taxable years 2020 and 2021 pursuant to Section 4 (bbbb) of RA No. 11494.
- Businesses or enterprises which incurred net operating loss for the taxable years 2020 and 2021 shall be allowed to carry over the same as a deduction from its gross income for the next 5 consecutive taxable years immediately following the year of such loss, unless otherwise disqualified from claiming the said deduction.
- The net operating loss for said taxable years may be carried over as a deduction even after the expiration of RA No. 11494, provided that the same are claimed within the next 5 consecutive taxable years immediately following the year of such loss.
- The NOLCO shall be separately shown in the taxpayer's Income Tax Return (also shown in the Reconciliation Section of the Tax Return), while the unused NOLCO shall be presented in the Notes to Financial Statements showing, in detail, the taxable year in which the net operating loss was incurred, and any amount thereof claimed as NOLCO deduction within 5 consecutive years immediately following the year of such loss.
- The NOLCO for taxable years 2020 and 2021 shall be separately presented in the Notes to the Financial Statements separately from the NOLCO for other taxable years. Failure to comply with this requirement will disqualify the taxpayer from claiming the NOLCO.

RMO No. 30-2020 amends RMO No. 16-2020 prescribing the allocation of the CY 2020 BIR Collection Goal by Implementing Office.

RMO No. 30-2020 issued on 22 September 2020

- This has reference to the revised BIR collection goal for 2020, which was approved by the Development Budget Coordination Committee last 28 July 2020.
- The BIR's CY collection goal was reduced to P1.686 Trillion.
- This Order amends the allocation of 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 Goals of P1,641.602 Billion from BIR Operations, and P 44.132 Billion from non-BIR Operations.

    2. The revised Collection Goal from BIR Operations of P1,641.602 Billion is lower by P490.806 Billion or 23.02% compared to the previous year's refined collection of P2,132.408 Billion.

    3. The decrease in CY 2019 refined collection from BIR Operations of 23.02% was uniformly applied to all Implementing Offices.

Banks and Other Financial Institutions

BSP-Issued Securities (Bills and Bonds)

Circular No. 1095 publishes Monetary Board Resolution 1108 amending the provisions of the MORB and the MORNBFI to operationalize the additional instrument for BSP monetary operations, particularly the inclusion of the BSP-issued Securities (Bills and Bonds), under the Interest Rate Corridor System.

BSP Circular No. 1095 dated 08 September 2020

- The BSP provides for additional monetary instruments for liquidity management in the form of BSP-Issued Securities (Bills and Bonds). These shall be subject to 20% final withholding tax (FWT) upon payment or accrual, whichever comes first.
- The interest rates shall be determined by auction, the tenor shall be set by the BSP, and the coupons shall be issued in Philippine Peso.
- The BSP shall have the right to buyback or redeem the issued securities prior to maturity date. These shall also be available for secondary market trading on the trading platform of the Philippine Dealing and Exchange Corporation.
- Placement of banks in the BSP-issued Securities as well as in BSP Term Deposit Facility (TDF) and Overnight Deposit Facility are now eligible for liquidity floor.
- The BSP shall withhold the 20% FWT from interest payments on all Overnight Reverse Repurchase Agreements, Overnight Deposits and TDF upon payment or accrual, whichever comes first. On the other hand, the concerned banks/QBs shall now be made to bear the direct liability for, and the payment of, the Gross Receipts Tax (GRT) due on the said interest payments.

Reconciliation Statement on Demand Deposits

Circular No. 1096 publishes Resolution No. 1151 of the Monetary Board amending the MORB and MORNBFI to implement semestral submission of the Reconciliation Statement by banks and QBs on their DDsA maintained with the BSP.

BSP Circular No. 1096 dated 16 September 2020

- Banks and QBs are required to submit a Demand Deposit Account (DDA) Reconciliation Statement on solo basis.
- The regular submission of the DDA Reconciliation Statement shall commence starting with the semester ending 31 December 2021.

Trust Corporations

Circular No. 1098 publishes Resolution No. 1081 dated 27 August 2020 approving the guidelines on the distribution of trust products of TC and related amendments to the MORNBFI T-Regulations on the establishment of branches and marketing offices.

BSP Circular No. 1097 dated 21 September 2020

- A TC shall carry out its trust and other fiduciary business only at the place of business specified in its articles of incorporation.
- Its marketing office may engage only in marketing, client profiling, and preparation and receipt of documents for the opening and establishment of an account. It may receive client funds and/or corresponding instructions for subscriptions to and/or redemption/withdrawal of UITFs.
- No TC operating in the Philippines shall establish branches without prior approval of the Monetary Board. A TC may establish a marketing office/s upon giving prior notice to the BSP.
- The trust products of a TC shall only be distributed by the TC itself, except for UITFs which may be submitted by third-party distributors.

- A TC may engage a third-party distributor subject to prior notification to the BSP and compliance with the prudential criteria under Sec. 111-T. A distributor is only allowed to perform activities of a TC marketing office.

- A TC shall ensure that the outsourcing of functions of its directors/officers will not compromise confidentiality or access to (client) sensitive information.

Ceiling on Interest or Finance Charges for Credit Card Receivables

Circular No. 1098 publishes Resolution No. 1185 dated 17 September 2020 approving the following amendments to the MORB and MORNBFI on the ceiling on interest or finance charges for credit card receivables.

BSP Circular No. 1098 dated 24 September 2020

- Banks shall notify the cardholder at least 90 calendar days prior to any change in the manner of computation of the outstanding balance and the amount of fees to be imposed on the cardholder.

- Both Banks and Credit Card Issuers shall impose an interest or finance charge on all credit card transactions not to exceed an annual interest rate of 24%, except credit card installment loans which shall be subject to monthly add-on rate not exceeding 1%.

- In the case of credit card cash advances, aside from the foregoing applicable maximum interest rate caps, no other charge or fee shall be imposed or collected apart from the processing fee in the maximum amount of Php200 per transaction. Such maximum processing fee and interest rates or finance charges shall be subject to review by BSP every 6 months.

- Banks and Credit Card Issuers shall only charge interest or finance charges arising from the non-payment in full or on time of the outstanding balance based on the unpaid amount of the outstanding balance as of statement cut-off date. This will only apply to change in interest or finance charges and the change in processing fees brought about by the imposition of the cap on interest or finance charges on all credit card transactions and the imposition of the maximum amount of processing fee on credit card cash advances which will take effect on 3 November 2020.

- Credit card issuers shall disclose to each of their existing and potential credit cardholders, to the extent practicable, a detailed explanation and a clear illustration of the manner by which all interest, charges and fees are computed. They shall notify cardholders at least 90 calendar days prior to any change in the manner of computation of the outstanding balance and the amount of fees to be imposed.

- The rate of interest, including commissions, premiums, fees and other charges, on any loan, or forbearance of any money, goods or credits regardless of maturity and whether secured or unsecured, shall not be subject to any regulatory ceiling, except for the interest or finance charges imposed on credit card receivables, including cash advances and installment purchases and for the maximum processing fee for credit card cash advances.

Capital Adequacy Ratio Report

Memorandum No. M-2020-067 provides for Transitory Guidelines on the Reporting of Certain Exposures in the CAR Reports.

BSP Memorandum No. M-2020-067 dated 4 September 2020

- Peso-denominated loans shall be afforded a zero percent (0%) risk weight and shall be temporarily reported in the same manner as a guaranteed exposure of the Trade and Investment Development Corporation of the Philippines (TIDCORP).

- Current exposures to Micro, Small and Medium Enterprises (MSMEs), both qualified and unqualified portfolio, shall be temporarily reported as follows:

FROM	TO
Basel 1.5 CAR Report for Stand-alone TBs, RBs and Coop Banks	
Qualified MSME loan portfolio reported in Item D.(1) of Part III.1. Risk Weighted On-Balance Sheet Assets with 75 percent risk weight	Current MSME loans, both qualified and unqualified portfolio to be reported in Item C.(2) of Part III.1.. Risk Weighted On-Balance Sheet Assets with 50 percent risk weight
Basel III CAR Report for U/KBs and their Subsidiary Banks and Quasi-banks	
Qualified MSME loans reported in Item 1.2.a.5.i of Part III.1. Risk Weighted On-Balance Sheet Assets under 75 Percent risk weight column Unqualified MSME loans reported in Item 1.2.a.5.iii of Part III.1. Risk Weighted On-Balance Sheet Assets under 100 percent risk weight column	Current MSME loans, both qualified and unqualified portfolio to be reported in Item I.2.a.5.iii of Part III.1. Risk Weighted On-Balance Sheet Assets under 50 percent risk weight column

"Bayanihan to Recover As One Act"

Memorandum No. M-2020-068 requires for the immediate compliance with Section 4 (uu) of R.A. No. 1149 on the "Bayanihan to Recover As One Act", which took effect last 15 September 2020.

BSP Memorandum No. M-2020-068 dated 18 September 2020

- Section 4 (uu) of R.A. No. 1149 requires all covered institutions to implement a mandatory one-time 60-day grace period for loans that are existing, current and outstanding, and falling due, or any part thereof, on or before 31 December 2020.
- The mandatory one-time 60-day period shall apply to each loan of individuals and entities with multiple loans.
- BSFIs shall not charge or apply interest on interest, penalties, fees or other charges during the mandatory one-time 60-day grace period for future payments/amortizations of the borrowers.
- BSFIs are likewise prohibited from requiring their clients to waive the application of the provisions of the "Bayanihan to Recover As One Act."
- No waiver previously executed by borrowers covering payments falling due until 31 December 2020 shall be void.
- The accrued interest for the one-time 60-day grace period may be paid by the borrower on staggered basis until 31 December 2020. Nonetheless, this shall not preclude the borrower from paying the accrued interest in full on the new due date.
- The parties may agree to:

  1. Grace period longer than 60 days; and/or
  2. Payment of accrued interest on staggered basis beyond 31 December 2020.

Personal Equity and Retirement Account (PERA)

Memorandum No. M-2020-069 provides for amendments to the reporting template of PERA in compliance with the BSD requirement.

BSP Memorandum No. M-2020-069 dated 22 September 2020

- The amended reporting templates of PERA are as follows:

  1. BSD-PERA-Form 1 – Quarterly Report on Compliance with the Basic Deposit Requirement (Annex A-1); and

  2. BSD-PERA-Form 2 – Report on Basic Security Deposit Transactions (Annex A-2).

- The updated BSD-PERA-Form 1 shall be used beginning 31 December 2019 report. The quarterly BSD reports for reporting periods 31 December 2019, 31 March 2020 and 30 June 2020 shall be due consistent with the deadlines prescribed under Memorandum No. M-2020-063 dated 7 August 2020.

- The updated BSD-PERA-Form 2 shall be used prospectively for Reports on BSD transactions that are due to be submitted within 3 banking days from the effectivity of this Memorandum.

- The other submission guidelines under Memoranda Nos. M-2019-007 dated 14 March 2019 and M-2019-014 dated 3 May 2019 shall continue to apply.

Annual Service Fees for Banks and Non-Banks with Quasi-Banking Functions

Memorandum No. M-2020-071 provides for guidelines on the computation and collection of the 2020 ASF for Banks and NBQBs, effective immediately.

BSP Memorandum No. M-2020-071 dated 24 September 2020

- The ASF shall be computed by multiplying the Average Assessable Assets (AAA) of the preceding year by the applicable assessment rates:

Types of Financial Institution	Applicable Rate
Universal/Commercial Banks	1/28 of 1%
Thrift Banks	1/28 of 1%
Rural/Cooperative Banks	1/40 of 1%
NBQBs	1/28 of 1%

- The AAA shall be computed by dividing the sum of Net Assessable Assets (NAA) of the preceding year by the no. of Reporting Periods.

- The AAA computation shall consider the NAA of the covered institutions or of the newly formed institution as well as the NAA from one bank category to another in case of merger or consolidation and upgrading or downgrading, respectively.

- Adjustments shall be made for any over or under-payment warranted by the events after the 2019 ASF collection.

- The accepted mode of payment shall be the Demand Deposit Account (DDA) debit, maintained with adequate balance.

- ASF collection shall be exempt from taxes, including the withholding thereof.

- Any noted exceptions or inaccuracies in the billing notice, together with supporting documents, shall be submitted within 10 working days before the specified date of collection/debit to DDA indicated. Otherwise, the noted exceptions shall be considered in the immediately succeeding year.

Annual Service Fees for Non-Stock Savings and Loan Associations and Trust Corporations

Memorandum No. M-2020-071 provides for guidelines on the computation and collection of the 2020 ASF for NSSLAs and TCs.

BSP Memorandum No. M-2020-072 dated 24 September 2020

- The ASF for NSSLAs shall be the lower value between 1/65 of 1% of its Average Assessable Assets (AAA) of the immediately preceding year or the maximum amount of ASF per AAA range:

Total AAA of NSSLA	Maximum Amount of Annual Fees
>P1.0 billion	P500,000.00
>P750.0 million - P1.0 billion	P400,000.00
>P500.0 million - P750.0 million	P200,000.00
>P250.0 million - P500.0 million	P100,000.00
>p100.0 million - P250.0 million	P 50,000.00
Up to P100.0 million	P 10,000.00

- The minimum ASF for those which falls in the P100 million category above shall be P10,000.

- The AAA shall be computed by dividing the sum of the end-of-quarter Total Assessable Assets by the No. of Quarters in Operation during the particular assessment period.

- The ASF for TCs shall be computed by multiplying the average monthly balance of Assets under Management (AUM) by the applicable rate:

Years of Operation	Prescribed Rate
First three (3) years	0.01%
Fourth year and onwards	0.02%

- Securities under custodianship shall be exempt.

- Billing notice/s shall be sent by the BSP Department of Supervisory Analytics (DSA) in September 2020.

- Online payment channels indicated in the assessment letter shall be the accepted mode of payment.

- ASF collection shall be exempt from taxes.

- Any noted exceptions or inaccuracies in the billing notice, together with supporting documents, shall be submitted within 10 working days before the specified date of collection/debit to DDA indicated. Otherwise, the noted exceptions shall be considered in the immediately succeeding year.

Bureau of Customs

ASEAN Wide Self-Certification Scheme

CMO No. 24-2020 provides for the guidelines in the implementation of the AWSC.

CMO No. 24-2020

- This CMO aims to implement the AWSC under the First Protocol to Amend the ASEAN Trade in Goods Agreement (First Protocol), which provides for a simplified and streamlined procedure to claim and avail of the ASEAN Trade in Goods Agreement (ATIGA) preferential tariff rates for intra-ASEAN exports.
- The Assessment and Operations Coordinating Group (AOCG), through the Export Coordination Division (ECD), shall carry-out proper examination of the application for Certified Exporter status.
- The ECD shall monitor the proper use of the authorization, including verification of the correctness or authenticity of Origin Declarations made out by Philippine Certified Exporters.
- The PRU (Preferential Rate Unit) shall evaluate the authenticity and validity of the Origin Declaration submitted by importers and grant ATIGA preferential tariff rates accordingly.
- An exporter who intends to be authorized as a Certified Exporter shall submit the following documentary requirements to the BOC:

    1. Duly accomplished application form;
    2. Unique Reference Number as Philippine Economic Zone Authority (PEZA) locators and Client Profile Registration System for non-PEZA locators or other Free Zone locators;
    3. List of official/s and their positions in the company authorized to sign the Origin Declaration with their respective specimen signatures (not to exceed 10 persons);
    4. Evaluation report for goods applied for authorization to make out an Origin Declaration; and
    5. In the case of a trader, a "manufacturer's declaration" (in the form of Attachment A) indicating the origin of the product for which it will make out Origin Declarations and readiness of the manufacturer to cooperate in retroactive check and verification visit should the need arise.

- The ECD shall evaluate the same based on the following criteria:

    1. Exporter is a legitimate exporter, who must have been transacting with the BOC for at least 1 year prior to the date of application;
    2. Exporter must have been exporting products to at least 1 ASEAN Member State for at least 1 year;
    3. Exporter must have a good compliance measured by risk management of BOC;

4. Exporter must have a sound bookkeeping and record keeping system;

5. Exporter must have responsible officer/s or person/s authorized to sign the Origin Declaration, who must have sufficient knowledge, competence in Rules of Origin (ROO) application, including future changes in ATIGA ROO;

6. Exporter must be willing to be subjected to regular monitoring and inspection to determine the correctness of its declaration with respect to the goods exported; and

7. Exporter must be willing to cooperate in retroactive check and verification visits.

- After evaluation, if the application is found to be meritorious, the ECD shall recommend to the Deputy Commissioner, AOCG the granting of Certified Exporter status, and prepare the written Authorization with the corresponding authorization number including the date of the authorization, within 15 working days from the date of receipt of application. Otherwise, it shall recommend disapproval of the application stating the reason/s for the denial.

- The following are the obligations of a Certified Exporter:

  1. Keep its supporting records in relation to all Origin Declarations made out for not less than 3 years from the date of making out of the Origin Declaration, for the purpose of the verification process pursuant to the ATIGA;

  2. Allow the BOC access to records and premises for the purpose of monitoring the use of the authorization and of the verification of the correctness of the declarations made. The records and accounts must allow for the identification and verification of the originating status of goods for which an Origin Declaration was made out, during at least 3 years from the date of making out the Origin Declaration;

  3. Make out the Origin Declaration only for goods for which the Certified Exporter has been authorized to make out an Origin Declaration and for which the Certified Exporter has all the appropriate documents proving the originating status of the goods concerned at the time of making out the Origin Declaration;

  4. For the duration of the authorization, ensure that the person(s) responsible for making out the Origin Declarations know and understand ROO application, including any future amendments to the ATIGA ROO;

  5. Assume full responsibility for all Origin Declarations made out on behalf of the company, including any misuse;

  6. Promptly inform the ECD of any changes related to the information submitted;

  7. Submit a quarterly summary report of all Origin Declarations made out during the same period using the prescribed form and submit said report to the ECD, within seven days after the end of each quarter; and

  8. Cooperate in retroactive checks and verification visits.

- The Certified Exporter shall, in case where export of goods satisfies the Chapter 3 of the ATIGA, make out an Origin Declaration on the commercial invoice. However, if the Origin Declaration cannot be made out on the commercial invoice at the time of exportation, it may be made out on any of the following commercial documents: billing statement, delivery order or packing list, and will be accepted at the time of importation and clearance if submitted together with the commercial invoice. In cases where the sales invoice is issued either by a company located in a third country or by an ASEAN exporter for the account of the said company, the Certified Exporter may make out the Origin Declaration on the billing statement, delivery order or packing list, subject to the same condition provided in the preceding paragraph.

- A Certified Exporter may make out a Back-to-back Origin Declaration subject to certain conditions.

- For shipments availing of the preferential tariff rate under ATIGA, the existing customs import procedures in CMO No. 16-2011 shall still apply, except that an Origin Declaration may be used in lieu of a Certificate of Origin (Form D). The Origin Declaration must accompany the import documents which must all be presented prior to the release of goods unless otherwise allowed under CMO 16-2011.

- This CMO took effect on 20 September 2020.

Guidelines on Refund and Tax Credit

CMO No. 25-2020

CMO No. 25-2020 applies to refund for overpayment or erroneous payment and other refund of duties and taxes as implemented under CAO 4-2019, and shall likewise apply to payment of refund arising from final decisions in protest cases, judicial decisions, special laws, and Executive or Presidential issuances, as well as payment of refund claims duly approved and endorsed by the BIR to the BOC.

- Claims for refund of duties and taxes may be filed on any of the following grounds:

    1. When there is error in the assessment or goods declaration;

    2. When the BOC permits a change in customs procedure, in the instances of consumption to warehousing, from one where duties and taxes are paid to another where no or less duties and taxes are required to be paid;

    3. Manifest clerical errors made on an invoice or entry, errors in return of weight, measure and gauge; or

    4. Errors in the distribution of charges on invoices not involving any question of law, which means only question of facts.

- No application for refund shall be accepted if the amount of claim is less than PhP5,000.00.

- Applications for refund of duties and taxes shall be filed within 12 months or 360 days from the date of payment of duties and taxes.

- If the claim is for refund of purely internal revenue taxes only, such as Value Added Tax (VAT), Excise Tax, etc., the application must be filed by the claimant with the BIR.

- Procedure for the application for refund:

    1. At the Office of District Collector (ODC):

        - Upon payment of the Refund Processing Fee, the claimant shall file the application for refund of duties and taxes using a standard Application Form, which must be duly sworn to before a Notary public. The notarized Application Form shall be supported by the necessary documentary requirements.

        - Upon receipt of the Application Form with supporting documents, the ODC shall do the following simultaneously:

            a. Transmit the Application Form with original supporting documents to the Law Division, for evaluation and disposition;

            b. Forward the Request for Verification of Payment to the Revenue Accounting Division (RAD), for verification if duties and taxes were actually paid and remitted to the Bureau of Treasury;

            c. Forward the Request for Certification of No Outstanding Obligation'' to the Collection Service, for verification of outstanding liabilities of the claimant, if any;

        - The RAD shall cause the immediate verification of the payment of duties and taxes and transmit the duly accomplished Certification of Payment to the Law Division of the Port concerned.

        - The Collection Service shall verify if the claimant has outstanding obligations with the BOC and thereafter transmit the Certificate of No Obligation to the Law Division of the Port concerned.

        - The Law Division shall have 15 days from receipt of the docket to evaluate the application for refund. Upon receipt, the Law Division shall immediately review the Application and check for completeness of supporting documents. In case the documents are not sufficient to support the claim for refund, the Chief, Law Division shall immediately send notice to the claimant electronically via email and state the documents necessary to evaluate the claim.

        - Upon submission of the complete documentary requirements, the Law Division shall review the claim and issue a Disposition Form with Statement of Refund indicating its recommendation on the application for refund and forward the same to the ODC for its appropriate action.

        - Within 5 days from receipt of the docket with the Disposition Form and Statement of Refund issued by the Law Division, the ODC shall either approve or disapprove the application.

        - If the claim is approved, the ODC shall sign the Statement of Refund and forward it together with the entire docket folder to the Office of the Commissioner (OCOM) for automatic review within 5 days from date of promulgation.

- If the claim is disapproved, the ODC shall notify the claimant via electronic mail and/or regular mail stating the reasons for the disapproval. The claimant may file an appeal on the denial by the District Collector of a claim for refund, whether it is full or partial denial, with the OCOM within 30 days from the date of the receipt of the denial.

2. At the Office of the Commissioner:

   - Upon receipt of the docket from the ODC, on automatic review or appeal, the OCOM shall immediately forward it to the Legal Service, Revenue Collection and Monitoring Group (RCMG), for review. The Legal Service shall have 15 days from receipt thereof to review the decision of the ODC and to issue a Disposition Form for consideration of the OCOM.

   - In cases where the Legal Service deems that submission of additional documentary evidence is necessary, the Legal Service shall immediately send notice to the claimant electronically via email, copy furnish the ODC concerned, and state the documents necessary to review the approval of the claim.

   - The OCOM shall either approve or disapprove the Disposition Form issued by the Legal Service within 10 days from receipt thereof.

   - If the claim is approved, the docket shall be elevated to the Department of Finance (DOF) for automatic review, within 5 days from date of promulgation. If the OCOM fails to render a decision within 30 days from receipt of records, the same shall be automatically elevated to the DOF for review.

   - If the claim is disapproved, a notice shall be sent to the claimant via electronic mail and/or regular mail, stating the reasons for the disapproval. The claimant may also appeal to the Court of Tax Appeals (CTA) the denial of his claim within 30 days from receipt of the decision of OCOM.

   - The decision of the Secretary of Finance/DOF is final upon the BOC.

3. Rules and procedure on payment:

   - The approved refund claim by the BOC may be paid either through cash or Tax Credit Certificate (TCC).

   - For Payment of BIR approved claims

     a. Refund of internal revenue taxes duly approved by the BIR and endorsed to the BOC for payment shall be supported by necessary documents such as the Letter of Endorsement issued by the BIR and the entire docket of the claim

     b. Upon the issuance by the Financial Management Office (FMO) of its recommendation on the amount to be refunded, the Tax Credit Committee shall issue a Disposition Form containing its recommendation for approval of the OCOM.

     c. Upon approval of the OCOM, payment of the claim shall be processed.

- Payment of Refund arising from Final Decisions in Protest or Civil Cases and other issuances

    a. Payment of refund of duties and taxes arising from final decisions in protest cases and judicial decisions shall be supported by the original or certified true copy of the final decision, including the Entry of Judgment in case of judicial decisions, and other documents that may be required.

    b. Upon receipt of the final decision involving refund, the OCOM shall immediately forward it to the Legal Service, Revenue Collection and Monitoring Group, for review. The Legal Service shall have 15 days from receipt thereof to check for completeness of documents as well as to resolve questions of law, if any, and to issue a Disposition Form for consideration of the OCOM.

    c. In cases where the Legal Service deems that submission of additional documentary evidence is necessary, the Legal Service shall immediately send notice to the claimant electronically via email and state the documents necessary to review the approval of the payment of the claim.

    d. Upon approval of Disposition Form, the OCOM shall forward the docket to the Tax Credit Secretariat and follow the rules on payment.

4. Rules on the utilization of the TCC:

    - The original grantee of the TCC shall file with the Tax Credit Secretariat, a notarized Request for Utilization of TCC, together with the necessary supporting documents.

    - Upon submission of complete supporting documents, the Tax Credit Secretariat shall do the following simultaneously:

        a. Forward the Request for Certification of No Outstanding Obligation to the Collection Service, for verification of outstanding liabilities of the claimant, if any; and

        b. Forward the Request for Verification of Authenticity and Balance of the TCC/s to the FMO.

    - The Collection Service shall verify if the applicant has outstanding obligations with the BOC and thereafter transmit the Certificate of No Obligation to the Tax Credit Secretariat within 2 days from receipt of the Request for Certification of No Outstanding Obligation;

    - The FMO shall verify if the TCC is authentic and duly issued by the BOC and shall certify the updated balance thereof. The FMO shall transmit the Certificate of Authenticity and Balance to the Tax Credit Secretariat within 2 days from receipt of the Request for Request for Verification of Authenticity and Balance of the TCC/s.

    - The Tax Credit Committee shall review the Request for Utilization of TCC and issue a Disposition Form, indicating its recommendation, including the percentage of utilization (e.g. 30%, 50% or 100%) and forward the same to the OCOM for approval.

- The approved Disposition Form shall be routed to the FMO for evaluation and thereafter forwarded to the RAD for the issuance of a Tax Debit Memo (TDM). The TDM shall bear the original amount, the creditable balance, and the amount to be charged or deducted from the particular TCC sought to be utilized for the payment of duties and taxes. However, no TDM shall be issued if the applicant has outstanding obligations with the BOC.

5. Rules on the revalidation of the TCC:

   - If the TCC is not fully utilized within 60 days prior to its expiration, the original grantee of the TCC must file with the Tax Credit Secretariat a notarized Request for Revalidation of TCC. The Request for Revalidation of TCC shall be supported by the original copy of the TCC, previous Tax Debit Memos, if any, and other pertinent documents, as may be required.

- A processing fee shall be imposed upon every application for tax credit and refund ranging from Php 700.00 to Php 5,000.00 depending on the amount of claim.

- This CMO took effect on 09 October 2020.

Board of Investments

Compliance with Pre-Registration Requirements

BOI MC No. 5 prescribes the guidelines on compliance with the pre-registration requirements for approved applications for BOI registration to effectively carry out the intent and purposes of Executive Order No. 226, as amended, and to ensure the timeliness of compliance with the pre-registration requirements.

BOI Memorandum Circular No. 2020-005, s.2020

- Upon date of receipt of the notice of approval, the applicant firm will be given 60 days to comply with the pre-registration requirements.

- Any requests for extension of the period to comply with the pre-registration requirements shall be filed before the lapse of the 60-day period provided in the Notice of Approval. Otherwise, the Board may resolve that the application for registration may be deemed withdrawn, without prejudice to the re-filing of the application for registration, provided that the activity is still listed in the current IPP at the time the application is filed.

- The approval of the request for extension of the period to submit pre-registration requirements to a period not exceeding 120 days shall be delegated to the concerned Service Director, subject to the payment of non-refundable fee of PHP 15,000.00.

- The fee shall be imposed only after the lapse of the 60-day period indicated in the notice of approval or on the 61st day.

- The payment of the fee shall not apply to projects of Micro and Small Enterprises.

- In no case will the total period within which enterprises may comply with the pre-registration requirement be beyond 6 months from receipt of the Notice of Approval. Upon failure of the enterprise to comply within the said period, the application for registration of the said enterprise may be deemed withdrawn, without prejudice to the re-filing of the application for registration provided that the activity is still listed in the current IPP at the time the application is filed.

- Any requests for extension for a period beyond 120 days shall be resolved by the Board.

- This circular took effect 15 days following its publication in a newspaper of general circulation on 13 September 2020 and filing 3 copies of the ONAR at the UP Law Center, Diliman, Quezon City.

PEZA

PEZA MC No. 46 issues guidelines on the receiving of new and late renewal Residual Waste Hauler registration applications.

PEZA Memorandum Circular (MC) No. 46 Series of 2020 dated 15 September 2020

- Applications for new and late renewal of registration as Residual Waste Hauler (RWH) will resume on 1 October 2020. Late renewal includes those registrations that expired on or before 31 January 2020. Training certificate requirements are waived while the State of the Public Health Emergency (SPHE) is in place.

- Pursuant to PEZA MC No. 28-2020, the validity of registration of RWHS whose Certificate of Registration (COR) expired on 30 June 2020 are extended, renewal applications are to be filed within 30 days upon lifting of the SPHE, and the Training Certificate requirement is still waived.

- All applicants (new and late renewal) for registration as RWH must submit the complete documentary requirements (as seen in the Citizen's Charter) to the respective emails of the Environmental Safety Group (ESG) or the Environmental, Health and Safety Division (EHSD) who has jurisdiction over their respective province/region as follows:

REGION/PROVINCE	RECEIVING OFFICE	EMAIL ADDRESS
Laguna, Batangas, Rizal, Quezon, Metro Manila, Bulacan	ESG	ensd@peza.gov.ph
CAR, Region 1, Region 2 and Region 3 (except Bulacan)	BCEZ-EHSD	bcezehsd.gr@peza.gov.ph
Cavite	CEZ-EHSD	cezehsd@peza.gov.ph
Viz-Min	MEZ-EHSD	mezehsd@peza.gov.ph

- The conduct of site inspection shall be done remotely or through online platforms. All findings and observations during the remote/virtual site inspection shall be complied with within 30 calendar days, otherwise, the application will be deemed cancelled.

SEC Filing, Payments and Other Deadlines

SEC MC No. 25 provides guidelines in enforcing the right to inspect and/or reproduce records of any director, trustee, stockholder and members of a corporation under Section 73 of R.A. No. 11232 or the RCC and the procedure for the conduct of investigation for violation of such right.

Guidelines in the Filing, Investigation and Resolution of Complaints for Violation of the Right to Inspect and/or Reproduce Corporate Records

SEC Memorandum Circular (MC) No. 25 Series of 2020 dated 20 August 2020

- An aggrieved party may file a report, in the form of a Verified Complaint, with the CRMD or any of the SEC Extension Offices if a corporation, or any of its officers or agents, denies or does not act on a demand for inspection and/or reproduction of corporate records. The filing fee of P10,130 inclusive of the legal research fee and DST shall be paid.

- The following shall constitute a violation of the right to inspect and/or reproduce corporate records:

    1. Outright refusal to allow the director, trustee, stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative;

    2. Failure to take, within a reasonable period of time, necessary steps that would allow the inspection;

    3. Failure to give the director, trustee, stockholder, or member of the corporation reasonable time to inspect records;

    4. Outright refusal to reproduce records;

    5. Failure to take, within a reasonable period of time, necessary steps that would allow the requesting party to reproduce any corporate record; and

    6. Failure to give reasonable amount of time to reproduce any corporate record.

- The contents of the Verified Complaint should be followed. A sample is attached to the MC as Annex "A".

- The Complainant shall file 3 original (properly marked) copies of the Verified Complaint with its supporting documents, and an additional copy for every Respondent.

- The Director of the CRMD or the appropriate Extension Office, or his/her duly authorized representative, may dismiss outright the Verified Complaint based on any of the following grounds:

    1. The Verified Complaint is not compliant with the required contents in Section 3 of this MC;

    2. Lack of jurisdiction by the CRMD or the appropriate Extension Office over the subject matter of the Verified Complaint;

    3. Pending action of complaint involving the same subject matter or issues in any court, tribunal or agency; or

    4. Insufficient evidence as may be found by the CRMD or the appropriate Extension Office that would reasonably establish *prima facie* the truth of the factual allegations contained in the Verified Complaint, on the basis of the documents, affidavits, and other evidence attached thereto.

- Upon the filing of the Verified Complaint, the determination of authority to act over it and the sufficiency of its substance, the CRMD or the appropriate Extension Office shall issue summons within 5 days from the filing of the Verified Complaint.

- Within 10 calendar days from receipt of the Summons, the respondent shall file 3 original copies of the Verified Answer and serve a copy thereof to the Complainant. Each Co-Respondent must also be furnished a copy if Respondents decide to file their separate Verified Answers.

- If the Respondent fails to answer the Verified Complaint within the period fixed by the rules, the CRMD or the appropriate Extension Office may, *motu proprio*, proceed to render a judgment granting the relief, or imposing the sanction/s as the Complaint and/or evidence presented may warrant. The Director of the Operating Department may require the Complainant to submit additional evidence *ex parte*.

- A clarificatory conference, upon the discretion of the CRMD or the appropriate Extension Office, may be conducted before the rendition of a Final Order but not later than 30 days after the last Verified Answer is filed.

- Before the issuance of a Final Order, the complainant and respondent may arrive at an amicable settlement or resolution. The execution of the amicable settlement has the effect of withdrawing the Verified Complaint.

- The withdrawal of a Verified Complaint does not automatically result in the outright dismissal of the investigation on the violation of the right to inspect and/or reproduce corporate records, nor discharge the Respondent/s from the possible imposition of any administrative sanction or penalty when there is merit to the charges, or where there is documentary evidence which would tend to establish a *prima facie* case warranting the continuation of the proceedings.

- Within 30 days after the conclusion of the clarificatory conference or hearing, or the receipt of the last affidavits, documents, or papers requested or ordered to be submitted during the conference or hearing, or the expiration of the period for filing the same, the CRMD or the appropriate Extension Office shall issue a Final Order, containing the appropriate order, sanction, grant of relief or denial thereof or such other conditions or terms to be imposed, and a demand for payment of the penalties, if applicable. Administrative sanctions shall be imposed after due notice and hearing.

- If the Final Order includes a directive to the respondent to allow the complainant to inspect and/or reproduce any of the corporate records within a specified period, both parties shall file a joint Verified Status Account ("VSA") or their respective VSAs, within 15 days from the date of compliance, or from the last day of the period within which to comply.

- Before the rendition of a Resolution, a second clarificatory conference may be conducted for the purpose of ascertaining facts, issues and other matters necessary and relevant to the resolution of the proceedings, and further examination or submission of additional documents thereto.

- The CRMD or the appropriate Extension Office shall issue a Resolution within 30 days from the receipt of the joint VSA or the last VSA, or from the expiration of the period within which to file the VSA.

- After due notice and hearing, the Commission may impose any or all of the sanctions under Section 158 of the Revised Corporation Code of the Philippines.

- The 2016 SEC Rules, or the amendments thereto, shall apply on motions for reconsideration, appeals, execution proceeding, including the imposition of administrative sanctions on the abuse of the right to inspect and/or reproduce corporate records.

- The procedure for investigations, and administrative actions or proceedings, including the rules on decisions, final orders, resolutions, motions for reconsideration, execution and appeals, of the 2016 Rules of Procedure of the SEC or the amendments thereto shall apply in the imposition of administrative sanctions on the abuse of the right to inspect and/or reproduce corporate records.

- The provisions of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004," its implementing rules and regulations, and the arbitration agreements provided in the articles of incorporation or by-laws of corporations shall not apply to the resolution or settlement of disputes or controversies arising from violations of the right to inspect and/or reproduce corporate records.

- These rules shall take effect immediately after its publication in the Official Gazette

Other SEC Updates

Guidelines in the Implementation of a Risk-Based Approach to Anti-Money Laundering Combating the Financing of Terrorism (AML/CFT) and Adoption and Development of a Risk Rating System for SEC Covered Persons

SEC MC No. 26 provides the guidelines in the implementation of its Risk-Based Approach to AML/CFT and resolves to adopt an ARRS to be employed in the conduct of its on-site examinations of covered persons.

SEC Memorandum Circular (MC) No. 26 Series of 2020 dated 25 September 2020

- Risk Assessment and Management by Covered Persons

1. This MC applies to all SEC covered persons as enumerated under Section 3(a) of the AMLA and Section 1.2 of the SEC MC No. 16. Series of 2018 or the 2018 AML/CFT Guidelines.

2. Institutional Risk Assessment refers to a comprehensive exercise to identify, assess, understand a covered person's ML/TF threats, vulnerabilities and the consequential risks, with a view to mitigate illicit flow of funds and transactions. It should be commensurate to the size, nature, and complexity of the covered person's business and should enable it to understand how, and to what extent, it is vulnerable to ML/TF. Moreover, it should be properly documented, regularly updated, and communicated to the relevant covered person's senior management. Lastly, it shall be conducted, at least, once every 2 years, or as often as the board or senior management, the SEC, or the AMLC may direct.

3. Information to be Considered. In conducting their risks assessments, covered persons should consider quantitative and qualitative information obtained from relevant internal and external sources to identify, manage, and mitigate these risks. This may include the National Risk Assessment (NRA) published by the AMLC, the Sectoral Risk Assessment conducted by the Commission, crime statistics, typologies, risk indicators, red flags, guidance and advisories issued by inter-governmental organizations, national competent authorities and the Financial Action Task Force (FATF), and AML/CFT mutual evaluation and follow-up reports by the FATF or associated assessment bodies.

4. Risk Factors. In identifying and assessing indicators of ML/TF risk to which they are exposed, covered persons should consider a range of factors including:

    - The nature, diversity, and complexity of its business, products, and target markets;

    - The proportion of customers identified as high risk;

    - The jurisdictions in which the covered person is operating or otherwise exposed to, especially jurisdictions with greater vulnerability due to contextual and other risk factors such as the prevalence of crime, corruption, or financing of terrorism, the general level and quality of the jurisdiction's prosecutorial and law enforcement efforts related to AML/CFT, the regulatory and supervisory regime and controls, and transparency of beneficial ownership;

    - The distribution channels through which the covered person distributes its products, including the extent to which the securities provider deals directly with the customer and the extent to which it relies on third parties to conduct customer due diligence (CDD) or other AML/CFT obligations, the complexity of the transaction chain and the settlement systems used between operators in the payment chain, the use of technology, and the extent to which intermediation networks are used;

    - The internal and external control functions and regulatory findings; and

    - The expected volume and size of its transactions, considering the usual activity of the covered person and the profile of its customers.

5. Country/Geographic Risk. Factors that may be considered as indicators of higher risk include countries/areas:

    - Identified by credible sources as providing funding or support for terrorist activities or that have designated terrorist organizations operating within them;

    - Identified by credible sources as having significant levels of organized crime, corruption, or other criminal activity, including source or transit countries for illegal drugs, human trafficking and smuggling and illegal gambling;

    - Subject to sanctions, embargoes or similar measures issued by international organizations such as the United Nations; and

    - Identified by credible sources as having weak governance, law enforcement, and regulatory regimes, including countries identified by the FATF statements as having weak AML/CFT regimes, and for which financial institutions should give special attention to business relationships and transactions.

6. Customer/Investor Risk. Categories of customers whose business or activities may indicate a higher risk include:

    - Customer is sanctioned by the relevant national competent authority for non-compliance with the applicable AML/CFT regime and is not engaging in remediation to improve its compliance;

- Customer is a politically exposed person (PEP) or customer's family members or close associates are PEPs;
- Customer resides in or whose primary source of income originates from high-risk jurisdictions;
- Customer resides in countries considered to be uncooperative in providing beneficial ownership information;
- Customer acts on behalf of a third party and is either unwilling or unable to provide consistent information and complete documentation thereon;
- Customer has been mentioned in negative news reports from credible media, particularly those related to predicate offenses for ML/TF or to financial crimes;
- Customer's transactions indicate a potential connection with criminal involvement, typologies or red flags provided in reports produced by the FATF or national competent authorities;
- Customer is also a covered person, acting as an intermediary or otherwise, but is either unregulated or regulated in a jurisdiction with weak AML/CFT oversight;
- Customer is engaged in, or derives wealth or revenues from, a high-risk cash-intensive business;
- The number of suspicious transaction reports (STRs) on certain customers and their potential concentration on particular client groups;
- Customer is a legal entity predominantly incorporated in the form of bearer shares;
- Customer is a legal entity whose ownership structure is unduly complex as determined by the covered person or in accordance with any regulations or guidelines;
- Customers who have sanction exposure; and
- Customer has a non-transparent ownership structure.

7. Product/Service/Transaction Risk. Products and services that may indicate a higher risk include:
   - Products or services that may inherently favor anonymity or obscure information about underlying customer transactions;
   - The geographical reach of the product or service offered, such as those emanating from higher risk jurisdictions;
   - Products with unusual complexity or structure and with no obvious economic purpose;
   - Products or services that permit the unrestricted or anonymous transfer of value to an unrelated third party, particularly those residing in a higher risk jurisdiction;

- Use of new technologies or payment methods not used in the normal course of business by the covered person;
- Products that have been particularly subject to fraud and market abuse, such as low-priced securities;
- The purchase of securities using physical cash;
- Offering bank-like products, such as check cashing and automated cash withdrawal cards;
- Securities-related products or services funded by payments from or instructions given by unexpected third parties, particularly from higher risk jurisdictions;
- Transactions wherein customers request the transfer of funds to a higher risk jurisdiction/country/corridor without a reasonable business purpose provided; and
- A transaction is requested to be executed, where the securities provider is made aware that the transaction will be cleared/settled through an unregulated entity.

8. Distribution Channel Risk. An overall risk assessment should include the risks associated with the different types of delivery channels to facilitate the delivery of securities products and services.
    - Covered persons that distribute products or services directly through online delivery channels should identify and assess the ML/TF risks that may arise in relation to distributing its products using this business model as well as when they develop new products and new business practices;
    - Covered persons should analyze the specific risk factors, which arise from the use of intermediaries and their services. An intermediary risk analysis should include the following factors, to the extent that these are relevant to the securities providers' business model:
        a. Intermediaries suspected of criminal activities, particularly financial crimes or association with criminal associates;
        b. Intermediaries located in a higher risk country or in a country with a weak AML/CFT regime;
        c. Intermediaries serving high-risk customers without appropriate risk mitigating measures;
        d. Intermediaries with a history of non-compliance with laws or regulation or that have been the subject of relevant negative attention from credible media or law enforcement;
        e. Intermediaries that have failed to attend or complete AML/CFT training programs requested by the covered persons; and
        f. Intermediaries that have weak AML/CFT controls or operate substandard compliance programs, i.e. programs that do not effectively manage compliance with internal policies and/or external regulation or the quality of whose compliance programs cannot be confirmed.

9. Institutional Risk Management. The board of directors of the covered persons shall exercise active control and supervision in the formulation and implementation of institutional risk management. They shall be ultimately responsible for the covered persons' compliance with the AMLA and TFPSA, their respective IRRs, and other AMLC issuances.

    - Covered persons shall:

        a. Develop sound risk management policies, controls and procedures, which are approved by the board of directors to enable them to manage and mitigate the risks that have been identified in the NRA, or by the AMLC, the SEC, or the covered persons themselves;

        b. Monitor the implementation of those controls and to enhance them if necessary; and

        c. Take enhanced measures to manage and mitigate the risks where higher risks are identified.

    - Covered persons may adopt Reduced Due Diligence (RDD) to manage and mitigate risks if lower risks have been identified and if the requirements of Rules 13 to 16 of the 2018 IRR of the AMLA are met. RDD is not allowed whenever there is a suspicion of ML/TF.

- AML/CFT Risk Rating System of the SEC

    1. Risk Based AML/CFT Supervision. The SEC shall implement a risk-based AML/CFT supervision of its covered persons comprised of assessing the quality of controls to detect and deter ML/TF based on the assessed risks, including controls that are required by law. Such supervision shall be applied through off-site and on-site examinations, which can include questionnaires and dedicated meetings and shall be based on having appropriate access to all the books and records of each supervised covered person sufficient to provide all the information that the Commission needs.

    2. THE SEC will develop and implement a risk-focused examination process and adopt a ML/CFT Risk Rating System (ARRS) which will serve as a supervisory tool in measuring the effectiveness of the covered person's AML/CFT framework and its level of compliance with AML/CFT rules and regulations.

    3. Adoption of the ARRS. The ARRS is to be used by the SEC in the conduct of its on-site examinations of covered persons in order to ensure that supervisory attention is appropriately focused on entities with inefficient Board and Senior Management oversight and monitoring, inadequacies in their AML/CFT framework, weaknesses in their internal controls and audit, and defective implementation of their AML/CFT procedures and policies.

    4. Composite Rating. Under the ARRS, a covered person is assigned a Composite Rating based on an assessment of 3 components of a covered person's framework and operations in the prevention of ML/TF. These component factors consist of the following:

        - Efficient Board of Directors (BOD) and Senior Management (SM) oversight;

- Sound AML policies and procedures embodied in its Money Laundering and Terrorist Financing Prevention Program (MTPP) duly approved by the BOD; and

- Effective implementation.

5. Inherent and Residual Risks. The development and implementation of the risk rating system will have to take into account the inherent risks to which a covered person may be exposed and the level of its awareness of the risk, an assessment of the covered person's risk profile based on the records of the SEC, the sectoral risk assessment to be conducted by the SEC in coordination with the AMLC and the institutional risk assessment to be conducted by the covered persons concerned. The risk profile of a covered person shall initially be determined based on the following available information:

   - Value/size of assets or transactions
   - Complexity and diversity of products
   - Customer profile
   - Frequency of international transactions
   - Distribution channels
   - Record of compliance with relevant rules and regulations of the Commission

6. Control Risk. Assessment of the covered institution's control risk shall cover the following components with their corresponding sub-components and risk factors:

   - Efficient oversight of the BOD and SM

     a. Corporate governance
     b. Compliance Office
     c. Institutional Risk Assessment
     d. Internal Audit

   - Detailed AML policies and procedures and strong internal control and audit

     a. Coverage and Risk Management Policies and Practices
     b. Dissemination, continuing education and training program

   - Effective implementation of internal policies and procedures

     a. Customer Identification, Verification and Acceptance
     b. Ongoing monitoring and customer due diligence
     c. Covered Transaction Analysis and Reporting System
     d. Suspicious Transaction Analysis and Reporting System
     e. Record Keeping and Retention

7. Rating System. Covered persons shall be evaluated using an overall composite rating of Weak, Needs Improvement, Satisfactory, and Strong with the corresponding numerical scale of 1 (lowest) to 4 (highest).

8. Enforcement Actions. For findings and/or deficiencies noted during the assessment and evaluation of the covered persons using the ARRS, the following shall apply:

   - Overall rating of 4 and 3 – require no enforcement action

- Overall rating of 2 and 1 – require submission by the covered person to the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (AMLD-EIPD) of a written action plan duly approved by the BOD aimed at correcting the noted inefficiency in BOD and SM oversight, inadequacy in AML/CFT policies and procedures, weakness in internal controls and audit, and/or ineffective implementation within a reasonable period of time.

- Overall rating of 1 – considered an indication that the AML/CFT framework and level of AML/CFT compliance of the covered person concerned is grossly inadequate. Prompt corrective action shall be immediately implemented by the covered person and it shall be subjected to close monitoring and regular compliance audit by the AMLD-EIPD.

- If after due notice and hearing, the SEC finds that there is a violation of the mandatory provisions of these guidelines or any order issued by the SEC in the implementation thereof, including the failure of the covered person concerned to submit an acceptable plan within the deadline or to properly implement the action plan, the SEC may, in accordance with the provisions of the Revised Corporation Code of the Philippines (RCCP), impose any or all of the following sanctions taking into consideration the extent of participation, nature, effects, seriousness and frequency of the violation:

  a. Fine ranging from P5,000.00 to P2,000,000.00, and not more than P1,000.00 for each day of continuing violation but in no case to exceed P2,000,000.00;

  b. Permanent cease and desist order;

  c. Suspension or revocation of the certificate of incorporation; and

  d. Dissolution of the corporation and forfeiture of its assets under the conditions in the RCCP.

- Such violations shall likewise be a ground for the revocation of the secondary license of the erring or non-compliant corporation.

- The findings of any violations of the AMLA and its IRR shall be endorsed to the AMLC for appropriate action.

SEC provides guidelines for the implementation of the mandatory grace period for all loans pursuant to the Bayanihan to Recover as One Act.

SEC Notice Series of 2020 dated 21 September 2020

- On 15 September 2020, Republic Act No. 11494, otherwise known as the *Bayanihan to Recover As One Act*, took effect.

- In view thereof, financing companies (FCs), lending companies (LCs), and Microfinance NGOs (MF-NGOs) are required to implement a one-time 60-day grace period for all loans that are existing, current and outstanding, falling due or any part thereof on or before 31 December 2020.

- The mandatory one-time 60-day grace period shall apply to each loan, whether the borrower has a single loan or multiple loans with the subject FC, LC, or MF-NGO.

- FCs, LCs, and MF-NGOs shall not charge or apply interest on interest, penalties, fees, or other charges during the mandatory one-time 60-day grace period to future payments or amortizations of the borrowers.

- Furthermore, FCs, LCs, and MF-NGOs are prohibited from requiring their clients to waive the application of the provisions of the *Bayanihan to Recover As One Act*. No waiver previously executed by borrowers covering payments falling due until 31 December 2020 shall be valid.

- The accrued interest for the one-time 60-day grace period may be paid by the borrower on a staggered basis until 31 December 2020. Nonetheless, this shall not preclude the borrower from paying the accrued interest in full on the new due date.

- The parties may agree on a grace period longer than 60 days, and/or the payment of accrued interest on a staggered basis beyond 31 December 2020.

Supreme Court Cases

Commissioner of Internal Revenue vs. Lucio L. Co, et. al.
Supreme Court (First Division) G.R. No. 241424, promulgated 26 February 2020

In a tax-free exchange involving a controlled corporation under Sec. 40(C)(2) of the Tax Code, the element of control is satisfied even if one of the transferors already owns at least 51% of the shares of the transferee corporation, as long as after the exchange, the transferors, not more than five, collectively increase their equity in the transferee corporation by 51% or more.

Facts:

As of March 2012, Lucio L. Co, Susan P. Co, Ferdinand Vincent P. Co and Pamela Justine P. Co (Respondents) owned 99.9999% of Kareila Management Corporation (Kareila). Anthony Sy (Sy) owned the remaining .0001%. Respondents owned 66.55% of Puregold Price Club, Inc. (Puregold)'s total subscribed shares.

Under a Deed of Exchange dated 11 May 2012, Respondents and Sy transferred their 1,703,125 common shares in Kareila to Puregold in exchange for 766,406,250 common shares of Puregold. As a result of the share swap, Puregold acquired majority ownership of Kareila. Moreover, the Respondents, who, prior to the share swap, already collectively owned 66.5720% of the outstanding capital stock of Puregold, consequently increased their stockholdings to 75.8329%.

Respondents collectively paid capital gains tax (CGT) on the transfer but subsequently filed a claim for refund of the tax paid as they contended that their CGT payments were erroneous because, under Section 40(C)(2) of the National Internal Revenue Code (NIRC or Tax Code), their transfer of shares through the Deed of Exchange was a tax-exempt transaction.

Issues:

1. Are respondents entitled to a refund of the CGT based on the tax-free exchange provision of Section 40(C)(2) of the NIRC?

2. Is a prior confirmatory ruling from the BIR required for the tax refund?

Ruling:

1. Yes, Respondents are entitled to a refund based on Section 40 (C) (2) of the NIRC. Under the said provision, "No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property."

The NIRC defines "control" as "ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote."

Based on the foregoing, the requisites for the non-recognition of gain or loss are as follows: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and, (d) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.

On the element of control, it is not necessary that, after the exchange, each of the transferors individually gains control of the transferee corporation. It also does not prohibit instances when the transferor gains further control of the transferee corporation. The element of control is satisfied even if one of the transferors already owns at least 51% of the shares of the transferee corporation, as long as after the exchange, the transferors, not more than five, *collectively* increase their equity in the transferee corporation to 51% or more.

2. No. A prior confirmatory ruling from the BIR is not required before the transfer may be considered a tax-free exchange.

   BIR rulings are the ocial position of the BIR to queries raised by taxpayers and other stakeholders relative to *clarification and interpretation of tax laws*. The primary purpose of a BIR Ruling is simply to determine whether a certain transaction, under the law, is taxable or not, based on the circumstances provided by the taxpayer.

   Rulings merely operate to "confirm" the existence of the conditions for exemption provided under the law. If all the requirements for exemption set forth under the law are complied with, the transaction is considered exempt, whether or not a prior BIR ruling was secured by the taxpayer.

   Moreover, there is nothing in Section 40(C)(2) of the NIRC which requires the taxpayer to secure a prior confirmatory ruling before the transaction may be considered as a tax-free exchange. The BIR should not impose additional requirements not provided by law, which would negate the availment of the tax exemption.

Philippine Contractors Accreditation Board vs. Manila Water Company, Inc.
Supreme Court *En Banc* G.R. No. 217590, promulgated 10 March 2020

The creation of nationality-based license types under the implementing rules of the Contractors' License Law is void. The law does not limit the entities who can engage in the construction industry to Filipino citizens. Engaging in the construction business is not tantamount to the practice of a profession, which is regulated under the Philippine Constitution.

Facts:

Manila Water Company, Inc. (Manila Water) sought accreditation from the Philippine Contractors Accreditation Board (PCAB) of its foreign contractors to undertake its contracts for the construction of necessary facilities for its waterworks and sewerage system.

PCAB denied the request and explained that under Section 3.1, Rule 3 of the Implementing Rules and Regulations (or IRR) of Republic Act (RA) No. 4566 or the Contractors' License Law, Regular Licenses are reserved for, and issued only to, contractor-firms of Filipino sole proprietorship or partnership/corporation with at least 60% Filipino equity participation and which are organized and existing under Philippine laws.

Issue:

Is Section 3.1 of the IRR which requires at least 60% Filipino equity participation for a Regular License from PCAB valid?

Ruling:

No, Section 3.1 of the IRR is not valid. While PCAB is authorized to adopt rules to effect the classification of contractors, as may be necessary, it went beyond its authority when it created the nationality-based license types under Section 3.1. Congress did not intend to discriminate against foreign contractors as there is no restriction under RA 4566.

PCAB's contention was that Section 3.1 is consistent with the 1987 Constitution which mandates that the practice of all professions in the Philippines must be limited to Filipino citizens. However, a contractor under RA 4566 does not refer to a specific practice of profession, i.e., architecture, engineering, medicine, accountancy, and the like.

A corporation or juridical person, in this case a construction firm, cannot be considered a "professional" that is being exclusively restricted by the Constitution and our laws to Filipino citizens. The licensing of contractors is not to engage in the practice of a specific profession, but rather to engage in the business of contracting/ construction.

The citizenship or equity requirement to qualify for a contractor's license is one of the basic qualifications which Congress would have prescribed, had it intended to do so. Congress did not prescribe a minimum educational requirement for a contractor to be issued a license, as opposed to the professionals referred to under the Constitution. The law merely requires at least two years of experience in the construction industry, and knowledge of building, safety, health and lien laws of the Philippines and the rudimentary administrative principles of the contracting business.

The construction industry is not one which the Constitution has reserved exclusively for Filipinos. Neither do the laws enacted by Congress show any indication that foreigners are proscribed from entering into the same projects as Filipinos in the field of construction. Thus, setting the equity limit for a certain type of contractor's license has no basis.

Court of Tax Appeals Cases

Refund/ Issuance of Tax Credit

Double taxation means taxing the same property twice when it should be taxed only once; that is, taxing the same person twice by the same jurisdiction for the same thing. Otherwise described as "direct duplicate taxation" the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.

Petron Corporation vs. Commissioner of Internal Revenue
CTA (Second Division) Case No. 9565, 9606 and 9645 promulgated on 24 August 2020

Facts:

P Corp. is a domestic corporation. In the period from April to September 2015, P Corp. made various alkylate importations, which were all subjected to excise taxes. P Corp. paid the excise taxes due thereon on 7 April 2015, 5 June 2015, 28 September 2015 and 6 October 2015. P Corp. filed several applications for tax credit certificate or refund, seeking the recovery or refund of the excise taxes paid on the imported alkylate on 31 March 2017, 30 May 2017 and 28 July 2017. Thereafter, P Corp. filed before the Court of Tax Appeals a Petition for Review on 6 April 2017, 2 June 2017 and 8 August 2017.

Issues:

1. Was P Corp. entitled to the refund of excise taxes paid on imported alkylates made on various dates from April 2015 to September 2015?

2. Was there double taxation committed by the BIR when it taxed the alkylates?

Ruling:

1. No. Sections 129, 131 and 148 (e) of the Tax Code clearly state that excise tax shall attach to naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence. In the present cases, however, P Corp. claims that its alkylate importations should not be subject to excise tax on the ground that alkylate is not a product of distillation as contemplated under Section 148 of the Tax Code.

   Nowhere in the Department of Energy's (DOE) letter dated 24 July 2017 was it shown that it categorically confirmed that alkylate cannot be produced from distillation.

   While alkylate is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutane, are products of distillation. Isobutane - one of the raw materials of alkylate, is a product of distillation and there can be no alkylate without isobutane, which is a product of distillation.

   Such being the case, alkylate, being a product of distillation, is subject to excise tax, pursuant to Section 148 (e) of the Tax Code.

2. No. In this case, the subject matter of the tax imposed is on the importation of alkylate. And it is already a different subject matter when excise tax is imposed on the alleged use of alkylate as a blending component or raw material to produce another taxable article or goods. It must be noted that the law itself affirms this notion of two different subject matters arising from same imported article.

   There is no double taxation in this case since one of its elements is lacking, i.e., that the two taxes must be imposed on the same subject matter. This is so because the first imposition is upon the importation of goods, and the second, upon removal or reprocessed goods from production site. In other words, the first imposition is simply concerned with the importation of articles, while the subsequent imposition is on the manufacturing or production of goods in the Philippines for domestic sale or consumption or for any other disposition.

Lantro Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (First Division) Case No. 9436 promulgated 26 August 2020

Strict compliance with the 120+30-day periods is necessary for a refund claim of input VAT to prosper.

Facts:

L Corp. is a domestic corporation that received a Letter of Authority (LOA) from the BIR authorizing the examination of the company's books of accounts for all internal revenue taxes for calendar year (CY) 2014.

In January 2016, L Corp. filed with the BIR its administrative claim for VAT refund covering CY 2014. The BIR denied L Corp.'s application for refund/ issuance of tax credit certificate and, a copy of such denial was received by L Corp. on 26 July 2016.

On 23 August 2016, L Corp. filed the Petition for Review with the Court of Tax Appeals.

Issue:

Was L Corp. entitled to its claim for refund/ issuance of tax credit certificate?

Ruling:

No. Resort to an appeal with the Court of Tax Appeals should be made within t30 days either from receipt of the decision denying the claim or the expiration of the 120-day period given the respondent to decide the claim. Furthermore, it is settled that the 120+30-day periods in Section 112 is not a mere procedural technicality that can be set aside if the claim is otherwise meritorious. It is a mandatory and jurisdictional condition imposed by law.

The 30-day period provided by law should be reckoned from the receipt of the CIR's decision/ruling or after the expiration of the 120-day period, whichever is sooner. Moreover, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of the Court of Tax Appeals.

For purposes of determining as to when the 120-day period commences, the Supreme Court established a dichotomy between administrative claims filed before 11 June 2014, and those filed after the said date.

For claims filed beginning 11 June 2014, (RMC No. 54-2014), these rules apply:

1) At the time of filing the administrative claim, the taxpayer is already required to complete his supporting documents, and to attest (i.e., to give a statement under oath) that no other document will be submitted to prove his claim; and

2) The taxpayer is barred from submitting additional documents after he has filed his administrative claim.

Considering that the subject administrative claim was filed subsequent to 11 June 2014, the rules, as above-stated, under RMC No. 54-2014, must govern in this case. As a corollary, L Corp. is no longer entitled to a 30-day period after the filing of the administrative claim to submit the documentary requirements sufficient to support the said claim, which entitlement prevailed before the said administrative issuance. As such, the 120-day period shall already be reckoned from the actual date of filing of the said administrative claim.

L Corp.'s judicial claim was belatedly filed. L Corp. erroneously waited for the CIR's decision, despite the lapse of the 120-day period.

Vestas Services Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9604 promulgated on 16 September 2020

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

Facts:

V Inc. is a domestic corporation engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures) of wind power systems.

On 22 January 2015, V Inc. filed its 4th quarterly VAT Return for CY 2014.

V INC. filed a claim for refund of its excess and/or unutilized input VAT for the 4th quarter of CY 2014 with BIR Revenue District Office (RDO) No. 50 in December 2016. Subsequently, V Inc. filed another application for VAT refund covering the same period with BIR-RDO No. 51. In May 2017, V Inc. received a letter from BIR-RDO No. 51 denying its claim for VAT refund because the claim was filed beyond the prescribed period.

V Inc. argues that it is entitled to a VAT refund of its excess and/or unutilized input VAT attributable to its zero-rated sale of services during the 4th quarter of CY 2014.

Issue:

Was V Inc. entitled to a tax refund representing its alleged excess and/or unutilized input VAT credits attributable to its zero-rated sales to EDC for the fourth quarter of CY 2014?

Ruling:

No. RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The RE Developer must secure the following documents in order to qualify for VAT zero-rating on their purchases, as contemplated under RA No. 9513 and its Implementing Rules and Regulations, to wit:

1.) DOE Certificate of Registration;
2.) Registration with the BOI; and
3.) Certificate of Endorsement by the DOE.

There being no proof that a Certificate of Endorsement by the DOE was issued on a per transaction basis, it is no longer necessary to determine whether petitioner fulfilled the remaining requisites for a favorable resolution of petitioner's refund claim for input VAT for the 4th quarter of CY 2014.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions. It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.

Advanced World Systems, Inc. vs. Commissioner of Internal Revenue
CTA (*En Banc*) EB No. 2097 promulgated on 17 September 2020

An appeal to a denial of a taxpayer's administrative claim must be made within 30 days from the time the CIR failed to act on its administrative claim within 120 days from submission of complete documents in support of its claim.

Facts:

A Inc. is a domestic corporation engaged in primarily in the development, manufacturing, buying, selling, distributing and marketing software, computers, peripherals and other related products and parts. It also engages in computer consultancy and advisory and other related auxiliary services.

On 11 March 2011, A Inc. filed with the Bureau of Internal Revenue (BIR) an administrative claim for tax credit on excess input tax representing its alleged unutilized input value-added tax (VAT) for the period covering the period 1 April 2009 to 31 March 2010.

On 28 March 2018, A Inc. allegedly received a letter dated 16 March 2018 from the Commissioner of Internal Revenue (CIR) denying its administrative claim for refund.

On 28 June 2018, petitioner filed a Petition for Review before the Court of Tax Appeals (CTA) Division which denied its claim.

Issue:

Was A Inc. entitled to its claim for tax refund/ tax credit?

Ruling:

No. A Inc. should have filed a judicial claim before this Court within 30 days from the time the CIR failed to act on its administrative claim within 120 days from submission of complete documents in support of its claim.

An appeal to a denial of a taxpayer's administrative claim may only be made if such denial was issued within the 120-day period. And when the 120-day period lapses without any decision issued by the CIR, only an appeal to the inaction of the CIR may be made.

The pronouncements made in Revenue Memorandum Circular (RMC) No. 54-2014 applies to administrative cases filed after 11 June 2014 only. In the present case, the administrative claim for refund was filed on 11 March 2011 and A Inc. admitted in its Petition for Review before the CTA Division that it submitted the complete documentary requirements in support of its application during the period required.

The 120-day period commenced to run from the filing of the administrative claim on 11 March 2011. From then, the CIR had until 9 July 2011 to act on the administrative claim. Counting 30 days from 9 July 2011, the Petition for Review should have been filed on or before 8 August 2011. The Petition for Review was, however, filed only on 28 June 2018, which is the 30th day after its receipt of the Decision of the CIR. A Inc.'s non-compliance with the mandatory period of 120+30 days is fatal to its claim for refund on the ground of prescription.

City Government of Valenzuela vs. Commissioner of Internal Revenue
CTA (Third Division) No. 9872 promulgated 17 September 2020

CGT is imposed even on involuntary sales. LGUs are exempt from the payment of documentary stamp tax (DST) and registration fees with respect to registration of papers or documents on sale of delinquent real property.

Facts:

The LGU auctioned the subject property for non-payment of real property tax (RPT). The original owner failed to exercise its right to redeem the property and thus, ownership was transferred to the LGU. The LGU paid the capital gains tax (CGT), documentary stamp tax (DST), including penalties, surcharges, and compromise fee to secure a Certificate Authorizing Registration (CAR) to transfer the title to the LGU.

The LGU registered its claim for refund in a letter dated 23 July 2016. The Revenue District Officer (RDO) denied the LGU's claim for refund in a ruling dated 15 August 2017. The LGU filed its Motion for Reconsideration (MR) but Respondent Commissioner of Internal Revenue (CIR) denied it. Hence, the LGU filed a Petition for Review.

Issues:

1. Was the LGU entitled to the refund of CGT?

2. Can the LGU properly claim the refund of CGT, if any?

3. Was the LGU entitled to the refund of DST?

Ruling:

1. No. CGT of 6% is imposed on the gains presumed to have been realized in the sale, exchange or disposition of lands and/or buildings that is a capital asset.

   There was a sale within the purview of the Tax Code with respect to the auction made by the LGU. In addition, there is no showing that the subject property was an ordinary asset. In fact, the parties did not dispute the classification of the same as a capital asset. Section 39 (A) (1) of the Tax Code, provides the statutory definition of capital assets which is negative in nature. Thus, if the property or asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets.

   Further, Revenue Regulation (RR) Nos. 7-2003 and 9-2012 both declare that the involuntary transfer of real property does not affect its taxability either as a capital asset or an ordinary asset. Indeed, the involuntary nature of the sale, exchange, or disposition of the subject property, does not affect its classification as a capital asset or ordinary asset. Likewise, the involuntary sale of real property does not affect the taxability of the transaction, and it is not exempt from the imposition of CGT.

   Consequently, the CGT was correctly imposed on the sale of the subject property.

2. No. Section 56 (A) (3) of the Tax Code, provides that CGT due on the sale of real property is a liability for the account of the seller. Hence, as far as the government is concerned, the CGT remains a liability of the seller since it is a tax on the seller's gain from the sale of the real estate. While the previous owner of the subject property, was compelled to sell the said property to satisfy its tax liabilities due to the LGU, the seller of the subject property is not the LGU.

3. Yes. The LGU is exempt from the payment of DST pursuant to Section 281 of the Local Government Code (LGC) of 1991 which provides that all certificates, documents, and papers covering the sale of delinquent property to the city, if registered in the Registry of Property, shall be exempt from DST. While the Tax Code, is the later law as compared to the LGC, the provisions of the LGC will still be applied as it is the special law governing LGUs.

Euroversal Properties, Inc. vs. CIR
CTA (First Division) Case Nos. 9869 promulgated 3 August 2020

A taxpayer cannot claim a refund of CGT paid on a rescinded contract to sell considered as a cash sale.

Facts:

Petitioner E Co. filed a claim for refund of erroneously paid Capital Gains Tax (CGT) following the cancellation of the Contract to Sell of 13 land parcels in 2013. The CGT paid was based on the fair market value of the properties. Due to inaction of the BIR, E Co. filed a Petition for Review at the CTA.

The taxpayer argued that it is entitled to a CGT refund as a result of the rescission of the Contract to Sell and substantial justice and equity warrant the return of the CGT paid to avoid unjust enrichment on the part of the government.

The BIR insisted that there was no erroneously paid tax and that the appeal was filed out of time.

Issues:

1. Is the payment of the CGT on a rescinded sales transaction considered erroneous as to entitle the taxpayer to a refund?

2. Can the seller validly invoke restitution on the basis of equity?

Rulings:

1. No. The CTA held that E Co. has a valid contract with the buyer at the time the CGT was paid. The Contract to Sell required an initial down payment of 30% of the total selling price. Under Sec. 49(B) of the Tax code, as implemented by Revenue Regulations (RR) 2-98, as amended by RR 6-200 and RR 17-2003, any initial payment exceeding 25% of the selling price will be treated as a cash sale or deferred payment sale subject to 6% CGT on the entire selling price.

2. No. Although E Co. is the statutory taxpayer of CGT, the actual cash used to pay the same came from the buyer, which it withheld from the purchase price and correspondingly remitted to the BIR. With the rescission of the Contract to Sell, E Co. has the obligation to restitute the initial down payment as well as the CGT advanced by the buyer on its behalf. It is the buyer that stands to pecuniarily suffer as the 2-year period to file a refund claim has expired.

Assessment

Integrated Solutions Technology Limited vs. Commissioner of Internal Revenue
CTA (First Division) Case No. 9608 promulgated on 26 August 2020

All audit investigations must be conducted by a designated RO, duly authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA and that in case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA shall be issued in favor of the latter.

Facts:

I Ltd. is a Regional Operating Headquarters (ROHQ), which received a Letter of Authority (LOA) naming therein the specific Revenue Officer (RO) and Group Supervisor (GS) to examine the ROHQ's books of accounts for all internal revenue taxes for calendar year (CY) 2013. Thereafter, the ROHQ received the Preliminary Assessment Notice (PAN) and few days later, the BIR issued a Formal Assessment Notice (FAN). The ROHQ filed its protest against the FAN, which the BIR denied in its Final Decision on Disputed Assessment (FDDA) that the ROHQ received after several months.

The ROHQ filed the Petition for Review with the Court of Tax Appeals.

Issue:

Was there a valid assessment issued against the ROHQ?

Ruling:

No. Based on Section 6(A) of the Tax Code, an authority emanating from the Commissioner of Internal Revenue (CIR) or his/her duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

Under Sections 10 and 13 of the Tax Code, the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA. An RO must be authorized, through an LOA, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be rendered void.

Any re-assignment/transfer of cases to another RO or another group of ROs requires the issuance of a new LOA (Section C (1) and (5) of Revenue Memorandum Order (RMO) No. 43-90 dated 20 September 1990).

In this case, a new RO and GS, who were not named in the LOA issued to the ROHQ, continued the examination of the ROHQ's books of accounts and other accounting records for CY 2013. Further, there was a violation of the ROHQ's right to due process when the FAN was issued prior to the lapse of the 15-day period to respond to the PAN.

Section 228 of the Tax Code in relation to Section 3.1.1 of Revenue Regulations (RR) No. 12-99, as amended, prescribes, as part of due process in the issuance of tax assessments, that a taxpayer has 15 days within which to respond to the PAN before the said taxpayer can be considered in default. After the lapse of the said period, it is only then that the BIR may issue an FLD. In case the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.

Jollibee Worldwide Pte. Ltd. vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9005 promulgated 26 August 2020

Failure to strictly comply with the notice requirements prescribed under Section 228 of the Tax Code and Revenue Regulations No. 12-99 is tantamount to denial of due process. As a result, the assessments issued in this case are void, and all the proceedings and orders emanating from there are likewise void. As a rule, a void assessment bears no valid fruit.

Facts:

J Ltd. is a multinational company organized under the laws of Singapore and licensed to operate as a regional operating headquarters (ROHQ) in the Philippines.

In September 2011, then OIC– Regional Director of Revenue Region No. 7 issued the Letter of Authority (LOA) identifying the Revenue Officer (RO) and Group Supervisor who will examine the ROHQ's books of accounts for all internal revenue taxes for calendar year (CY) 2009. A Notice of Informal Conference (NIC) was subsequently issued by then Revenue District Officer of Revenue District Office No. 43A. In December 2012, a Preliminary Assessment Notice (PAN) was issued by then OIC– Regional Director of Revenue Region No. 7. In January 2013, the ROHQ received the Formal Letter of Demand (FLD) requesting payment of the following tax liabilities: income tax, withholding tax on compensation (WTC) and expanded withholding tax (EWT). On 25 January 2013, the ROHQ filed it reply to PAN.

The ROHQ filed in February 2013 its Protest Letter to the Formal Assessment Notice (FAN) requesting for the reconsideration and reinvestigation of the assessment. In September 2013, the ROHQ received the Final Decision on Disputed Assessment (FDDA). The ROHQ elevated its administrative appeal to the Commissioner of Internal Revenue (CIR), which was later denied in a letter received by the ROHQ on 4 February 2015.

Thus, the ROHQ filed the Petition for Review with the Court of Tax Appeals.

Issue:

Was the assessment issued against the ROHQ valid?

Ruling:

No. The BIR failed to observe due process requirements in the issuance of the FLD/FAN against the ROHQ.

Under Section 3 of Revenue Regulations (RR) No. 12-1999, a taxpayer has 15 days from receipt of the PAN to file a protest with the BIR. If during the said period, the taxpayer fails to file a protest to the PAN, it is only then that the CIR or his duly authorized representative, can consider the taxpayer in default, and correspondingly cause the issuance of a FLO and assessment notice, which shall be subsequently served to the said taxpayer.

In this case, records show that the PAN was issued on 28 December 2012. The ROHQ, however, testified that it received the PAN only on 10 January 2013, and that before it could respond to the PAN, it received the BIR's FAN and FLD on 15 January 2013, which is only five days from 10 January 2013, the ROHQ's alleged date of receipt of the PAN.

Thus, the burden is shifted to the CIR to prove receipt of the PAN by the ROHQ at a date earlier than 10 January 2013 to show the CIR's observance of the 15 day given to the ROHQ to respond to the PAN before the issuance of FAN and FLD. Notably, the CIR failed to present any counter evidence to show date of actual receipt of the PAN by the ROHQ. Hence, the Court gives credence to the testimony of the ROHQ that it received the PAN only on 10 January 2013.

The CIR should have granted the ROHQ a period of 15 days from said date or until 25 January 2013 to protest or respond to the PAN. As a corollary, it is only after the lapse of the said period that the CIR may issue the FLD or FAN. Contrary to the CIR's stand, the said 15-day period is reckoned from the date of actual receipt of the PAN by the ROHQ, and not the date of issuance of the PAN.

Considering that the ROHQ's right to due process was violated by the CIR, the Court has the power to grant the refund prayed for by the ROHQ. It follows that the amount garnished by the CIR from the ROHQ's bank account was not legally due to the government.

Morning Star Milling Corporation vs. Commissioner of Internal Revenue
CTA (Second Division) Case No. 9294 promulgated 26 August 2020

The concerned taxpayer must be fully apprised of the factual bases of the assessments and must not be left unaware on how respondent or his authorized representatives appreciated the explanations or defenses raised in connection with the assessments.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. Furthermore, a void assessment bears no valid fruit.

Facts:

The BIR's Large Taxpayers Service issued a Letter of Authority (LOA) against M Corp., identifying the Revenue Officers (ROs) A, B and C of Large Taxpayers District Office – Makati, who were authorized to examine M Corp.'s books of accounts for all internal revenue taxes for calendar year (CY) 2003. Thereafter, the BIR issued a LOA authorizing the ROs D and E to examine the books of accounts of M Corp. for all internal revenue taxes for 2002 and 2003. Subsequently, M Corp. received a copy of the BIR's undated Preliminary Assessment Notice (PAN), to which M Corp. filed a letter, requesting an extension of 30 days from the expiry of 15-days within which to file its protest to the PAN. In May 2007, M Corp. filed its Reply to the PAN.

Thereafter, M Corp. received the Formal Letter of Demand and Final Assessment Notice (FLD/FAN). M Corp. sent a letter to the BIR, stating, among others, (1) that it has not received any reply regarding its letter dated May 25, 2007; (2) that it received an unreadable photocopy of the FAN through LBC Express Inc. on 3 July 2007; and (3) that it reserves its right to answer the FAN, after receiving the copy thereof, as well as the schedule of expenses.

Subsequently, M Corp. received a Tax Verification Notice (TVN) authorizing RO A to verify the supporting documents of M Corp. relative to the latter's request for reinvestigation.

M Corp. then filed a letter with the BIR stating, among others, that it never requested for a reinvestigation of the assessment; and that it intends to avail of the tax amnesty under Republic Act (RA) No. 9480. M Corp. filed its Notice of Availment of Tax Amnesty dated 27 December 2007 and paid the amnesty tax. In July 2007, M Corp. received the Final Decision on Disputed Assessment (FDDA).

Issue:

Was there a valid assessment issued against M Corp.?

Ruling:

No. The subject PAN and FAN, as well as the FANs, are void as a consequence of the violation of M Corp.'s right to due process.

Based on Section 228 of the Tax Code, the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

The CIR must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must not be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

The BIR totally ignored the request of M Corp. to be informed of the factual bases of the subject withholding tax assessments, even up to the issuance of the assailed Decision dated 7 January 2016. Apparently, the BIR never, at any point, explained or showed how the figures reflected in the said undated PAN, as well as in the FLD and FANs dated 31 May 2007, as the bases for the withholding tax assessments, were determined, thereby violating M Corp.'s right to due process, as recognized under Section 228 of the Tax Code, and Sections 3.1.2 and 3.1.4 of Revenue Regulations (RR) No. 12-99. As a consequence of such violation, the said PAN, FLD, and FAN dated 31 May 2007 were rendered void.

Scicindustrial Corp. vs. Commissioner of Internal Revenue
CTA (Second Division) Case No. 9616 promulgated 27 August 2020

It is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.

Facts:

On 10 July 2014, a Letter of Authority (LOA) was issued against S Corp. authorizing Revenue Officer (RO) A and Group Supervisor B to examiner S Corp.'s books of accounts for all internal revenue taxes for calendar year (CY) 2013.

On 21 December 2016, S Corp. received a copy of the Preliminary Assessment Notice (PAN).

On 25 January 2017, S Corp. received a copy of the Formal Assessment Notice (FAN). S Corp. filed on 23 February 2017, via registered mail, a Protest to the FAN.

On 17 May 2017, S Corp. received a letter from the BIR, denying the Protest. S Corp. filed a Petition for Review with the Court of Tax Appeals (CTA).

Issue:

Was the FAN issued against S Corp. valid?

Ruling:

No. It is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

The revenue officers named in the LOA were different from those who actually examined S Corp.'s books of accounts and other accounting records for CY 2013. The authority of RO C emanated from a Memorandum of Assignment. The Memorandum of Assignment issued by then Revenue District Officer cannot validly grant RO C and GS D the authority to conduct the audit examination pursuant to the LOA issued against S Corp.

As a Revenue District Officer, he or she does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

Commissioner of Internal Revenue vs. Enjay Hotels
CTA (*En Banc*) EB No. 2052 promulgated on 16 September 2020

A LOA is synonymous to a Contract of Agency such that a LOA without the name of the revenue officer who will conduct the audit and assessment of the taxpayer be valid.

Facts:

On 24 May 2010, E Inc. received a Letter of Authority (LOA) issued by then CIR covering the audit/investigation of all its internal revenue taxes for taxable year (TY 2009). The LOA indicated the names of the revenue officers who were authorized to conduct the audit pursuant to the LOA.

During the course of the audit/investigation, E Inc. executed several Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code or Waiver.

On 19 March 2013 and 12 July 2013, respectively, Officer-in-Charge (OIC) Chief Regular Large Taxpayers Audit Division 3 (LT AD 3) issued Memorandum of Assignment (MOA) Nos. 126-RE-20 13-0066 and 126-0T-7-13-59, reassigning the audit investigation of E Inc. to a new revenue examiner and group supervisor. The audit proceeded as usual and reached the CTA.

Issue:

Was there a valid assessment issued against E Inc.?

Ruling:

No. Section 6(a) of the Tax Code grants the CIR or his duly authorized representative the power to authorize any revenue officer to conduct the audit/ investigation and assessment of a taxpayer.

Similar to a Contract of Agency, a LOA is the instrument which establishes the relationship between the CIR or his duly authorized representative and the revenue officer. Simply stated, this is the document where the authority, as well as the scope of said authority, is granted to the revenue officer.

It also follows that the LOA itself is the best and only proof that the revenue officer may show to the taxpayer his authority to audit and assess the same. Hence, it is but natural that the revenue officers also use the LOA to inform the taxpayer that an audit of his person has been authorized by the CIR.

The Tax Code is clear that the LOA is the only authority given by the CIR or his authorized representative to the revenue officer to conduct the audit or assessment of a taxpayer. Hence, any change in the terms of the LOA including the revenue officer designated to conduct the audit necessitates the issuance of a new LOA.

A document such as a MOA may be construed as an equivalent of a new LOA, provided that it contains all the elements necessary to establish a Contract of Agency between the CIR or his duly authorized representative and the new revenue officer. Included in these elements is the authority of the person issuing the MOA.

Section 10(C) of the Tax Code grants the Revenue Regional Director, as the CIR's authorized representative, the authority to issue LOAs. The position equivalent to a Revenue Regional Director for the Large Taxpayers Division is identified in RMO No. 29-07 as the Assistant Commissioner/Head Revenue Executive Assistant.

In order for the MOA to be considered as an equivalent of the LOA, it must be signed by the CIR or his duly authorized representative, but in this case, it is clear that the MOAs were only signed by then OIC-Chief, Regular LTAD 3, who is not the CIR, a Revenue Regional Director, or an Assistant Commissioner/Head Revenue Executive Assistant.

Commissioner of Internal Revenue vs. Central Luzon Drug Corporation
CTA (*En Banc*) EB No. 2038 promulgated 18 September 2020

Deficiency tax assessments issued without a valid LOA are void.

Facts:

C Corp. operates 52 drug stores. Each store is covered by a Franchise Agreement between C Corp. and another company.

The BIR issued a Letter of Authority (LOA) against C Corp. authorizing the examination of respondent's books of accounts and other accounting records for taxable year 2009. The said LOA authorized six revenue officers to examine C Corp. but it was another person not named in the LOA, who actually conducted the audit of C Corp.

The audit progressed as usual.

Issue:

Was there a valid assessment issued against C Corp.?

Ruling:

No. Deficiency tax assessments issued without a valid LOA are void.

A LOA is a grant of authority to a revenue officer/s to conduct an examination of a taxpayer's books of accounts and other accounting records for purposes of determining the correct amount of taxes due. This grant of authority is necessary as the power to examine a taxpayer has been confined by Section 6 of the Tax Code, as amended, only to the CIR or his duly authorized representatives. A LOA is a primordial requirement that is necessary to give effect to a deficiency tax assessment.

To be effective, a LOA must be issued either by petitioner himself or by his duly authorized representative, who under Section 13 of the Tax Code, as amended, is the Revenue Regional Director. Moreover, under Section D (4) of Revenue Memorandum Order (RMO) No. 43-90, the CIR expanded his list of duly authorized representatives who may issue LOAs that will authorize the examination of taxpayers for deficiency taxes, viz: Regional Directors; Deputy Commissioners; CIR; and other officials that may be authorized by the CIR for the exigencies of service.

Consequently, a Memorandum of Assignment or a Referral Memorandum, or any other letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA provided that it was issued by any of the persons listed above.

The Memorandum of Assignment authorizing a new examiner was merely issued by the Chief of LT-RAD 1, who is not a duly authorized representative of the CIR for purposes of issuing a LOA.

Local Business Tax (LBT)

Taguig City Government vs. Serendra Condominium Corporation
CTA (Second Division) Case AC-229 promulgated 10 September 2020

Association dues received by condominium corporations do not constitute gain or profit that is subject to LBT since these are collected for the benefit of the unit owners and incidental to the condominium corporation's responsibility to maintain the common areas.

Facts:

Petitioner Taguig City Government assessed Respondent S Condominium Corp. for, among others, deficiency Local Business Tax (LBT) and Environmental Impact Fee (EIF) for 2013. In imposing LBT and EIF, Taguig considered S Condominium Corp. as engaged in business, using as tax base the association dues collected from its members in 2012.

S Condominium Corp. argued it is a non-stock, non-profit corporation that manages the upkeep and maintenance of the condominium. It does not make profit from its collection of association dues as all amounts collected are allocated and defrayed for the payment of essential services and expenses to maintain the common areas. Any surplus forms part of the members' equity that is not returned to the members or distributed as dividends but reserved to fund future maintenance cost.

The taxpayer subsequently filed a complaint with the Taguig Regional Trial Court questioning the deficiency LBT assessment and the imposition of the EIF. Taguig City countered that S Condominium Corporation paid LBT and other fees in 2012 without protest.

Issues:

1. Are association dues received by condominium corporations subject to LBT?

2. Is it subject to the environmental impact fee?

Rulings:

1. No. S Condominium Corp. is not engaged in trade or business, hence, is not subject to LBT. Quoting the ruling of the Supreme Court in *Yamane vs. BA Lepanto Condominium, GR No. 154993, Oct. 25, 2005*, the CTA held that a condominium corporation is "not designed to engage in activities that generate income or profit" but is "especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners."

   Association dues do not constitute gain or profit but are collected purely for the benefit of the condominium unit owners and are the incidental consequence of a condominium corporation's responsibility to effectively maintain the common areas.

2. Yes. The CTA ruled that EIF is in the nature of a regulatory fee rather than a tax and its imposition is in line with the city's expressed policy "to prescribe regulation on entities doing business within its territorial jurisdiction" for purposes of "hauling and management of solid waste generated by citizens and business of the City." The Court held that the taxpayer failed to present evidence to prove its claim that the fees imposed are disproportionately in excess of the cost of regulation and waste management within Taguig.

Documentary Stamp Tax (DST)

Leadway Holdings, Incorporated vs. Commissioner of Internal Revenue
CTA (First Division) Case 9835 promulgated 9 September 2020

A deposit on future subscription is not subject to DST as it is received by a corporation to be applied as payment for future issuance of shares, an event which may or may not happen.

As a trust fund, the deposit is still withdrawable by the subscriber at any time before the issuance of the corresponding shares of stock. Its nature is not the same as a loan.

Facts:

Respondent CIR assessed L Co. for deficiency Documentary Stamp Tax (DST) on its deposit on future subscription of its stockholders and advances from shareholders. L Co. protested but the BIR issued a Final Decision on Disputed Assessment, denying its protest.

Aggrieved, L Co. filed a Petition for Review with the CTA, arguing that DST on debt instruments is not applicable to a deposit on future subscription as it is not a borrowing or lending as contemplated under Sec. 179 of the Tax Code. L Co. averred that deposits on future subscription are neither loan agreements nor debt instruments but merely an amount of money received by a corporation to be applied as payment for additional issuance of shares in the future. Moreover, the "deposit on future subscription" is presented in L Co.'s Statement of Financial Position as equity and not liability. L Co also noted that assessed DST for 2009 actually pertains to prior years' transactions, particularly from 2008 for advances from affiliates and 2005 for deposit on future subscription.

The BIR insisted that L Co. has the burden to prove the invalidity of the assessment, invoking the presumption of correctness of tax assessments.

Issue:

Is deposit on future subscription subject to DST?

Ruling:

No. Citing the Supreme Court's decision in *CIR vs. First Express Pawnshop Company, GR 1041102 promulgated on Aug. 7, 1996*, the CTA held that a deposit on future subscription is not subject to DST as it is "merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen." There is no subscription yet that creates rights and obligations between the subscriber and the corporation.

The deposit on future subscription is "money which the corporation will hold in trust for the subscribers." As a trust fund, this money is still withdrawable by any of the subscribers at any time before the issuance of the corresponding shares of stock. Its nature is not the same as a loan that is subject to DST.

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