

Tax Bulletin

December 2020 - January 2021



In everything we do, we nurture leaders
and enable businesses for a better Philippines.

#SGVforABetterPhilippines



A member firm of Ernst & Young Global Limited

Highlights

BIR Administrative Requirements

- ▶ Revenue Memorandum Circular (RMC) No. 4-2021 prescribes the guidelines in the filing of tax returns including the required attachments and payment of internal revenue taxes. **(Page 8)**
- ▶ RMC No. 6-2021 prescribes the use of the revised BIR Form No. 2200-M [Excise Tax Return for Mineral Products]. **(Page 9)**
- ▶ Revenue Memorandum Order (RMO) No. 47-2020 consolidates and updates the guidelines and procedures on the processing of claims for Value-Added Tax Credit/ Refund except those under the authority and jurisdiction of the Legal Group. **(Page 10)**

Other BIR Issuances

- ▶ RMC No. 138-2020 clarifies Revenue Regulations No. 25-2020 on the availment of Net Operating Loss Carry-over (NOLCO) for taxpayers adopting fiscal year. **(Page 12)**
- ▶ RMC No. 139-2020 prescribes the guidelines on the utilization of the 5% tax credit prescribed under the incentive provisions of Republic Act No. 9505 otherwise known as the PERA Act of 2008. **(Page 13)**
- ▶ RMC No. 1-2021 circularizes the consolidated Price of Sugar Millsite for the Month of November 2020. **(Page 16)**
- ▶ RMC No. 2-2021 prescribes the guidelines in the handling of enlisted/delisted Large Taxpayers. **(Page 16)**
- ▶ RMC No. 5-2021 provides the simplified policies on the application for registration of Computerized Accounting System, Computerized Books of Accounts and/or its components, including Electronic Storage System, middleware and other similar systems. **(Page 16)**
- ▶ RMC No. 7-2021 announces the availability of the Alphalist Data Entry and Validation Module (Version 7.0) and its updated file structures, standard file naming convention and job-aids. **(Page 17)**
- ▶ RMC No. 8-2021 circularizes Republic Act No. 11467, titled "An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, and 288-A, and Adding a New Section 290-A to Republic Act No. 8424, as Amended, Otherwise Known as the National Internal Revenue Code of 1997, and for Other Purposes". **(Page 17)**
- ▶ RMO No. 1-2021 prescribes the revised Office Audit Threshold for Cases to be Audited/Investigated by the Office Audit Section (OAS) of the Assessment Division in the Regional Offices. **(Page 17)**

Banks and Other Financial Institution

Restructured Service Fees for Bank's Deposit and Withdrawal Transactions

- ▶ Circular No. 1106 provides for restructured service fees for Banks' Deposit and withdrawal transactions. (Page 20)

Prudential Requirements for Designated Clearing and Settlement Banks

- ▶ Circular No. 1107 provides prudential requirements for designated clearing and settlement banks. (Page 21)

Amendment to Memorandum M-2020-080 dated 9 October 2020 on the Electronic Submission of the EPFS Monthly Report Template

- ▶ Memorandum No. 093 provides for amendment to Memorandum M-2020-080 dated 9 October 2020 on the Electronic Submission of the EPFS Monthly Report Template. (Page 22)

Single Reserve Week from 18 to 31 December 2020 and the Corresponding Computation for the Single Reserve Week

- ▶ Memorandum No. 094 provides for the Single Reserve Week from 18 to 31 December 2020 and the corresponding computation for the Single Reserve Week. (Page 22)

Extension of the Temporary Relief Measure on the Transactions with PhilPaSS until the Last Business Day of Year 2021

- ▶ Memorandum No. 095 provides extension of the Temporary Relief Measure on the transactions with PhilPaSS until the last business day of year 2021. (Page 23)

Availability and Security of Automated Teller Machines (ATMs) and Digital Financial Services (DFS)

- ▶ Memorandum No. 096 provides for the availability and security of Automated Teller Machines (ATMs) and Digital Financial Services (DFS). (Page 23)

Regulatory Relief on the Non-imposition of Sanctions for Breach in Single Borrower's Limit by Foreign Bank Branches Established Prior to Republic Act No. 10641

- ▶ Memorandum No. 002 provides for the Regulatory Relief on the Non-imposition of Sanctions for Breach in Single Borrower's Limit by Foreign Bank Branches Established Prior to Republic Act No. 10641. (Page 23)

Guidelines on the Electronic Submission of the Report on Reclassification of Debt Securities (RRDS) Out of the Fair Value Category

- ▶ Memorandum No. 003 provides for guidelines on the electronic submission of the Report on Reclassification of Debt Securities (RRDS) out of the Fair Value Category. (Page 24)

Retention of Existing Procedures on Deposits and Withdrawals

- ▶ Memorandum No. 004 provides for retention of existing procedures on deposits and withdrawals. (Page 25)

Bureau of Customs (BOC)

Accreditation and Regulation of BOC Value Added Service Providers (VASP)

- ▶ Customs Administrative Order (CAO) No. 14-2020 establishes the administrative and operational guidelines for the accreditation and supervision of VASP pursuant to Section 109, Chapter 2, Title I, Sections 1200, Chapter 1 Title XII, Section 1513, Title XV and other relevant provisions of the Customs Modernization and Tariff Act (CMTA). (Page 25)

Collection of General Safeguard Duty on Imported Cement pursuant to Department of Trade and Industry (DTI) Order No. 20-08

- ▶ Customs Memorandum Order (CMO) No. 29-2020 covers the Collection of General Safeguard Duty on Imported Cement pursuant to Department of Trade and Industry (DTI) Order No. 20-08 issued on 26 October 2020. (Page 27)

Guidelines for the Implementation of the General Transport Surety Bond (GTSB) through Automated Bonds Management System (ABMS)

- ▶ CMO No. 30-2020 provides the guidelines to implement the ABMS for GTSB in all customs port. (Page 27)

Board of Investments (BOI)

- ▶ BOI Memorandum Circular (MC) No. 11 Series of 2020 provides for the one-year extension on the compliance of BOI-registered enterprises with the terms and conditions of their BOI-registered projects. (Page 28)

Philippine Economic Zone Authority (PEZA)

- ▶ PEZA Memorandum Circular (MC) No. 2021-04 extends MC No. 2020-011 Entitled "PEZA Assistance to Ecozone I.T. Enterprises in Responding to COVID-19 (Corona Virus Disease)". (Page 29)

Other BSP Updates

Quarterly Report on Appraised Commercial Properties (QRACP)

- ▶ Memorandum No. 097 provides for the guidelines on the submission of Quarterly Report on Appraised Commercial Properties (QRACP) for the generation of the Commercial Property Price Index (CPPI). (Page 30)

Standard Operating Procedures for Philippine Holidays

- ▶ Memorandum No. 001 provides for the amendments to the Standard Operating Procedures (SOP) for Philippine Holidays. (Page 31)

Risk Assessment of Cash, Cross-Border and Cross-Sector Transactions

- ▶ Memorandum No. 005 provides for report on the risk assessment of Cash, Cross-Border and Cross-Sector Transactions. (Page 31)

Organization Changes in the Payments and Currency Management Operations Sub-Sector

- ▶ Memorandum No. 006 provides for advisory on organization changes in the Payments and Currency Management Operations Sub-Sector. **(Page 31)**

SEC Filing, Payments and Other Deadlines

2020 Compliance Officer's Certification

- ▶ Public Companies (PCs) and Registered Issuers (RIs) shall be required to submit a Compliance Officer's Certification, in lieu of the Annual Corporate Governance Report, certifying that the company has substantially adopted in its Manual on Corporate Governance all of the recommendations under the Code of Corporate Governance for PCs and RIs. **(Page 32)**

SEC payment facilities

- ▶ The SEC promulgates that the SEC payment facilities at the SEC Main Office (PICC Complex, Pasay City) and SEC Office (Ortigas, EDSA Mandaluyong City) will remain open from Monday to Friday, except holidays. **(Page 32)**

Notice to Retain Specific Corporate Term

- ▶ The SEC reminds existing corporations, registered prior to the effectivity of the Revised Corporation Code (RCC) on 23 February 2019, who intend to retain their corporate term to file the Notice to Retain Specific Corporate Term on or before 23 February 2021. **(Page 33)**

Creation of primary and alternative email addresses and mobile numbers

- ▶ The SEC clarifies that SEC Memorandum Circular No. 28, Series of 2020, which requires corporations, partnerships, associations and individuals to create and/or designate primary and alternative email addresses and mobile numbers for transactions with the Commission, covers and applies to corporations regulated and supervised by the Markets and Securities Regulations Department. **(Page 33)**

Other SEC Updates

Financial Reporting Relief in light of Covid-19 Pandemic

- ▶ SEC Memorandum Circular No. 35 Series of 2020 dated 28 December 2020 provides relief to licensed financing companies (FCs) and lending companies (LCs), and accredited microfinance NGOs (MF-NGOs) in light of the Covid-19 Pandemic, SEC shall allow staggered booking of provision for credit losses calculated in accordance with the requirements of Philippine Financial Reporting Standards (PFRS), PFRS for Small and Medium-Sized Entities (SMEs), or PFRS for Small Entities (SEs), as applicable, for annual period ending on or after December 31, 2020 (to consider those with fiscal year-end) for a maximum period of five (5) years using straight-line amortization method to be recognized in the profit or loss. **(Page 33)**

Regulatory Relief Measures to Manage the Effect of the COVID-19 Pandemic

- ▶ SEC Memorandum Circular No. 37 Series of 2020 dated 22 December 2020 provides the following regulatory reliefs to financing companies (FCs) and lending companies (LCs) and the corresponding guidelines to help the covered entities manage the effects of the COVID-19 pandemic pursuant to Republic Act (R.A.) No. 11494, or the Bayanihan to Recover as One Act. (Page 34)

Court of Tax Appeals Cases

Assessment

- ▶ A Motion for Reconsideration (MR), couched as "Petition to Set Aside/Recall Final Decision", of the decision of the Commissioner of Internal Revenue's (CIR) authorized representative, filed before the latter, will not toll the running of the 30-day period to appeal such representative's decision to the Court of Tax Appeals (CTA) or the CIR himself. (Page 35)
- ▶ Section 3 of Revenue Regulations (RR) No. 12 - 99, as amended by RR 18 - 2013 expressly provides that if a taxpayer, within fifteen (15) days from the date of receipt of the Preliminary Assessment Notice, responds that he/it disagrees with the findings of deficiency tax or taxes, a Formal Letter of Demand / Final Assessment Notice shall be issued within fifteen (15) days from filing/submission of the taxpayer's response. (Page 36)
- ▶ The taxpayer may only be assessed in the succeeding quarter the excess input tax has been carried forward. BIR cannot disallow excess input tax carried forward to succeeding period in the current period of assessment because it is beyond the scope of the assessment of the BIR.

Summary List of Purchases (SLP) alone will not suffice to substantiate/establish existence of purchase of goods or services. (Page 37)

- ▶ Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that it is entitled to the deduction claimed. (Page 38)

Refund/Issuance of Tax Credit

- ▶ The 120+30-day periods to appeal the decision or inaction of the Bureau of Internal Revenue (BIR) in a VAT refund application filed before the effectivity of the Tax Reform for Acceleration and Inclusion (TRAIN) Act are both mandatory and jurisdictional. Failure to comply with such periods is a ground for the denial of the VAT refund application. (Page 39)

- ▶ Certain essential elements must be present for a sale or supply of services to be subject to the VAT zero-rate, namely, (a) the services rendered should be other than processing, manufacturing, or repacking of goods; (b) the recipient of the services is a foreign corporation and the said corporation is doing business outside the Philippines or is a nonresident person not engaged in business who is outside the Philippines when the services were performed; (c) the service must be performed in the Philippines by a VAT-registered person; and (d) the payment for such services should be in acceptable foreign currency accounted for in accordance with the BSP rules. **(Page 40)**
- ▶ Party claiming for Input VAT credit/refund must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Input VAT claimed for credit/refund must not be supported by mere photocopies. **(Page 40)**
- ▶ The CTA emphasized laid down the following requirements for entitlement of a corporate taxpayer to a refund or issuance of TCC involving excess withholding taxes: (1) The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the Tax Cod; (2) It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (3) The fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount. **(Page 41)**

Local Business Tax

- ▶ In order for the tax base used in assessing Local Business Tax to be in accordance with the Local Government Code, the same should be based on gross receipts or the amount of consideration actually or constructively received. The consideration should be under the control of respondent without imposed restrictions as to its use. A Notice of Assessment issued upon a tax base not in accordance with the mandates of law shall render it void. **(Page 42)**

Prescription

- ▶ Both the date of discovery and the institution of judicial proceedings for investigation and punishment are significant events in the prosecution of any infraction of the Tax Code. It was observed that as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment up to the filing of the Information in court does not exceed 5 years, then the government's right to file a criminal action is not yet prescribed. **(Page 43)**

Supreme Court Cases

Membership fees or association dues considered as capital and not income

- ▶ Membership fees or association dues collected by recreational clubs are not subject to income tax since these are considered as capital and not income. Neither are these considered as gross revenues for VAT purposes since recreational clubs are not selling services to its members. **(Page 44)**

RMC No. 4-2021 prescribes the guidelines in the Filing of Tax Returns Including the Required Attachments and Payment of Internal Revenue Taxes.

BIR Administrative Requirements

RMC No. 4-2021 issued on 8 January 2021

- ▶ Taxpayers required to use or voluntarily opt to use the eBIR Forms shall file the tax returns electronically and pay the corresponding taxes due thereon through Authorized Agent Banks (AABs), Revenue Collection Officers (RCO) under the RDO where the taxpayer is registered through the Mobile Revenue Collection Officer System (MRCOS) in areas where there are no AABs, or other Electronic Payment modes allowed.
 1. Taxpayers who shall avail of the electronic payment (ePay) may access the allowed ePay facilities by accessing the BIR website.
 2. Taxpayers who will avail of Mobile Payment (GCash or PayMaya) shall download and install the GCash or PayMaya mobile application from the Google Play Store or Apple App Store or Huawei AppGallery.
 3. Taxpayers shall bear any convenience fee that may be charged by banks and/or mobile companies for using their online payment facilities.
- ▶ Taxpayers required to use or voluntarily opt to enroll in the eFPS shall file the return electronically and pay the corresponding taxes due thereon through the eFPS-AABs where they are enrolled.
 1. Taxpayers who are not yet enrolled in eFPS and have not yet enrolled in any eFPS-AAB shall use the eBIRForms for e-filing and pay the corresponding taxes through any payment facilities available.
 2. In case of newly created tax returns that are not yet available in the eFPS facility but already available in the eBIR Forms, taxpayers shall file the said returns using the eBIR Forms and pay through any payment channel enumerated in the first bullet.
- ▶ Taxpayers who are otherwise not required to file electronically (either through the eBIR Forms or the eFPS), nor voluntarily opt to do so, shall use the electronic or computer-generated returns or photocopied returns in its original format and in Folio/Legal size bond paper. The corresponding taxes due thereon shall be paid through the AABs under the jurisdiction of the concerned RDO where the taxpayer is registered or RCOs under the RDO where the taxpayer is registered through the MRCOS in areas where there are no AABs.
- ▶ Taxpayers who are not mandated to use the eFPS and eBIR Forms Facility are encouraged to electronically file their returns through the eBIR Forms Facility and pay the corresponding taxes due thereon through any payment channels mentioned in the first bullet.
- ▶ For submission of attachments, electronically filed and/or paid returns using eBIR Forms or eFPS without any attachment required, taxpayers need not submit printed copy of e-filed tax returns to the office under the Large Taxpayers Service/Revenue District Offices. Taxpayers with required attachments to their duly filed and paid tax returns shall be submitted through esubmission@bir.gov.ph.

1. For attachments to Annual/Quarterly ITRs duly filed electronically, concerned taxpayers may submit via Electronic Audited Financial Statement (eAFS) system the claimed tax credit certificates in lieu of attaching the physical copy of their claimed tax credits in the Quarterly ITRs. The email confirmation received from eAFS shall serve as proof of submission of said attachments. Other submissions made through SAWT shall continue to observe procedures per existing regulations.
 2. Submission and storage of original copies of attachments shall observe the provisions of relevant issuances.
- ▶ Filing of “No Payment Returns” by non-eFPS users shall be made electronically through the eBIR Forms facility. Taxpayers who filed “No Payment Returns” electronically shall likewise be required to file for their subsequent tax filings electronically, regardless of payments.
 - ▶ Senior Citizen (SC) or Persons with Disabilities (PWDs) filing for their own returns, employees deriving purely compensation income from two or more employers, concurrently or successively, and employees qualified for substituted filing can manually file their “No Payment Returns” with the RDO where they are registered using the electronic or computer-generated returns or photocopied returns in its original format and in Legal/Folio size bond paper.
 - ▶ In general, taxpayers who are required to file electronically but filed and paid manually shall be liable for violation tantamount to “Wrong Venue” filing.
 - ▶ In case of unavailability of eFPS covered by a duly released advisory, taxpayers shall electronically file through the eBIR Forms facility and pay the corresponding tax due thereon through the payment facilities provided for in the first bullet above. However, in case of unavailability of both eFPS and eBIR Forms facility through a duly released advisory, taxpayers shall observe the procedures in manual filing and payment of taxes as provided in the third bullet above.

RMC No. 6-2021 prescribes the use of the revised BIR Form No. 2200-M [Excise Tax Return for Mineral Products].

RMC No. 6-2021 issued on 8 January 2021

RMC No. 6-2021 prescribes the use of the revised BIR Form No. 2200-M [Excise Tax Return for Mineral Products] January 2018 (ENCS), which is already available in the BIR website. However, the form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms). Thus, eFPS/eBIRForms filers shall continue to use the BIR Form No. 2200-M in eFPS and in Offline eBIRForms Package v7.7 in filing and paying the Excise Tax due. Once the return becomes available in the eFPS and in the Offline eBIRForms Package, a separate revenue issuance shall be released to announce its availability.

Manual filers shall download the PDF version of the form, print the form and completely fill out the applicable fields, otherwise penalties under Sec. 250 of the Tax Code, as amended, shall be imposed. Payment of the due thereon, if any, shall be made thru:

- ▶ Manual Payment
 1. Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Large Taxpayers Service (LTS)/Revenue District Office (RDO) where the taxpayer (Head Office of the business establishment) is registered; or

2. In places where there are no AABs, the return shall be filed and the tax due shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer (Head Office of the business establishment) is registered using MRCOS facility.

▶ Online Payment

1. Thru GCash Mobile Payment; or
2. Landbank of the Philippines (LBP) Link Biz Portal, for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card; or
3. DBP Tax Online, for holders of VISA/MasterCard Credit Card and/or Bancnet ATM/Debit Card; or
4. UnionBank Online Web and Mobile Payment Facility - for Taxpayers who have account with UnionBank; or
5. PESONet through LBP Link.biz Portal - for taxpayers who have account with RCBC and Robinson Bank; or
6. Paymaya Mobile Payment.

RMO No. 47-2020 consolidates and updates the guidelines and procedures on the Processing of Claims for Value-Added Tax Credit/Refund Except Those Under the Authority and Jurisdiction of the Legal Group.

RMO No. 47-2020 issued on 8 January 2021

- ▶ All offices concerned shall prioritize the processing of VAT credit/refund claims filed over other claims not requiring the immediate issuance of Tax Credit Certificates (TCCs)/refund checks.
- ▶ The processing offices authorized to receive "Application for VAT Credit/Refund Claims" (BIR Form No. 1914) are as follows:
1. The VAT Credit Audit Division (VCAD) in the National Office shall receive claims of direct exporters regardless of the percentage of export sales to total sales and whose claims are anchored under Section 112 (A) of the Tax Code, as amended with the exception of the claims with a mix of VAT zero-rated sales emanating from sales of power or fuel from renewable energy sources pursuant to Section 108(B)(7) of the Tax Code, as amended;
 2. The Revenue District Office (RDO)/Large Taxpayers Audit Division (LTAD) under the Large Taxpayers Service (LTS) where the taxpayer is registered having jurisdiction over the taxpayer-claimant shall receive claims of taxpayers engaged in other VAT zero-rated taxpayers, other than direct exporters, such as renewable energy developers pursuant to Section 108(B)(7) of the Tax Code, as amended, and those with indirect exports classified as effectively VAT zero-rated sales, pursuant to Section 112 (A) of the Tax Code, as amended, and in Section II(2)(a) of this Order; and
 3. The RDO/LTAD having jurisdiction over the taxpayer-claimant shall receive claims of taxpayers whose VAT registration has been cancelled and those claims for recovery of erroneously or illegally assessed or collected VAT pursuant to Sections 112 (B) and 229, respectively, of the Tax Code, as amended.

- ▶ Only applications with complete documentary requirements, as enumerated in the Checklist of Requirements (Annexes A.1, A.2 or A.3), whichever is applicable, and which are filed within the prescribed period, shall be received by the authorized processing office.
- ▶ One of the documentary requirements is the Delinquency Verification Certificate (DVC) prescribed in Revenue Memorandum Circular No. 64-2019 (Annex "B") showing that the taxpayer has no outstanding (final and executory) tax liabilities as defined under Section II (1) of Revenue Memorandum Order No. 11-2014. Hence, the application shall not be accepted if such tax liabilities appear on the DVC, except for outstanding VAT liability which may be deducted from the approved BIR portion of the claim.
 1. Applications where the DVC shows delinquent accounts other than VAT shall not be received. The claimant has to settle first the tax liabilities so that a DVC with no tax liabilities can be issued by the concerned DVC-issuing office. If the delinquent accounts pertain to VAT liability and the amount is lower than the amount of claim on local purchases, the application shall be accepted.
 2. For claims where the outstanding VAT liability has been deducted from the claim, the processing office shall prepare a list of taxpayers whose claims for tax refunds were deducted with outstanding delinquent tax liabilities therefrom and furnish the same to the Revenue Accounting Division (RAD) for claims filed in the BIR National Office or Finance Division for claims filed in the Regional Offices together with the copy of the approved report.
 3. Even if the outstanding liability is VAT but the claim is purely from importations or the claim includes input VAT on importations, and the BIR portion thereof is not enough to cover payment for the VAT liability, the application shall not be accepted unless there is proof that the liability has been paid in full by the taxpayer.
- ▶ Tax Verification Notices (TVNs) shall be issued by the head of the processing office to authorize the verification of VAT credit refund claims filed under Sections 112 and Section 229 of the Tax Code, as amended. The TVNs shall still be manually issued until such time that the Tax Verification Notice Monitoring System (TVNMS)/Case Management System (CMS) are fully operational. The received application shall be encoded in the Tax Credit Refund module under the Internal Revenue Integrated System (IRIS) once the said system is deployed to concerned BIR offices.
- ▶ Pursuant to Section 112 (C) of the Tax Code, as amended, the time frame to grant claims for VAT refund is ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application. Thus, the start of the 90-day period is from the actual filing of the application with complete documents duly received by the processing office.
- ▶ The claims shall be processed based on submitted documents for verification by the assigned Revenue Officer (RO)/Group Supervisor (GS). This process shall not be construed as an audit/investigation; hence, the claimant may be issued subsequently an electronic Letter of Authority (LA) by an authorized office for that purpose. However, the books of accounts and accounting records that may have relevance to the claim of the taxpayer may be examined and verified upon request of the assigned RO.

- ▶ The reports of verification from the processing offices shall be forwarded to the following offices for review prior to approval by the approving official:
 1. Tax Audit Review Division (TARD) for dockets from the VCAD
 2. Regional Assessment Division for dockets from the RDO
 3. Office of the concerned Head Revenue Executive Assistant of the LTS for dockets from the LTAD
- ▶ The following are the revenue officials authorized to approve/disapprove the claims:

Processing Office	Amount of Claim	Approving Revenue Official
VCAD	Not more than P50 Million	Assistant Commissioner (ACIR) Assessment Service (AS)
	More than P50 Million up to P150 Million	Deputy Commissioner (DCIR) - Operations Group (OG)
	More than P150 Million	Commissioner (CIR)
LTAD under LTS	Regardless of amount	ACIR-LTS
RDO	Regardless of amount	Regional Director

- ▶ The result of the verification of the claim, whether approval or denial, shall be communicated to the taxpayer-claimant, which shall be signed by the authorized revenue official and shall be sent by the originating processing office.

Manually issued TCCs shall be converted by the concerned office to the Tax Credit Refund System in the ITS until any subsequent development upon the roll-out of the Internal Revenue Integrated System (IRIS).

Other BIR Issuances

RMC No. 138-2020 issued on 23 December 2020

- ▶ On 30 September 2020, Revenue Regulations No. 25-2020 was issued to implement Section 4 (bbbb) of Republic Act No. 11494 or the "Bayanihan to Recover as One Act" relative to the Net Operating Loss Carry-over (NOLCO) incurred by businesses for taxable years 2020 and 2021. Based on the said regulations, the business or enterprise which incurred net operating loss for taxable years 2020 and 2021 shall be allowed to carry over the same as a deduction from its gross income for the next five (5) consecutive taxable years immediately following the year of such loss.
- ▶ In the regulations, "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. Taxable years 2020 and 2021 shall include all those corporations with fiscal years ending on or before 30 June 2021, and 30 June 2022, respectively.
- ▶ Revenue Memorandum Circular No. 138-2020 was issued to clarify the regulations and identify the fiscal years that are counted under taxable years 2020 and 2021. The following fiscal year ending on the stated months are counted as follows:

RMC No. 138-2020 clarifies Revenue Regulations No. 25-2020 on the avilment of NOLCO for taxpayers adopting fiscal year

Taxable Year 2020	Taxable Year 2021
FY ending 31 July 2020	FY ending 31 July 2021
FY ending 31 August 2020	FY ending 31 August 2021
FY ending 30 September 2020	FY ending 30 September 2021
FY ending 30 October 2020	FY ending 31 October 2021
FY ending 30 November 2020	FY ending 30 November 2021
FY ending 31 January 2021	FY ending 31 January 2022
FY ending 28 February 2021	FY ending 28 February 2022
FY ending 31 March 2021	FY ending 31 March 2022
FY ending 30 April 2021	FY ending 30 April 2022
FY ending 31 May 2021	FY ending 31 May 2022
FY ending 30 June 2021	FY ending 30 June 2022

- ▶ The circular emphasizes that companies with fiscal years ending before 31 July 2020 and fiscal years ending after 30 June 2022 which incurred net operating loss are only allowed to carry over the loss as a deduction from its gross income for the next 3 consecutive taxable years under Section 34 (D)(3) of the Tax Code, as amended.

RMC No. 139-2020 prescribes the guidelines on the utilization of the 5% tax credit prescribed under the incentive provisions of Republic Act No. 9505 otherwise known as the PERA Act of 2008.

RMC No. 139-2020 issued on 23 December 2020

Issues	Guidelines/Procedures
Q1. What document will evidence the 5% tax credit?	A1. The name of the document is the PERA Tax Credit Certificate (PERA TCC) containing security features to ensure authenticity.
Q2. Who shall request for the issuance of PERA TCC and to whom it shall be applied?	A2. Qualified contributors shall directly request for the issuance of PERA TCC from the PERA Administrator to whom they have placed their contributions. In cases of employers who contribute a share to the account of their qualified employee, only the qualified employee can request for the issuance of PERA TCC. The PERA Administrator shall release the PERA TCC to the qualified contributors or their authorized representatives.
Q3. What internal revenue taxes shall be paid by the qualified contributor using the PERA TCC? What BIR Forms shall be accomplished by a qualified contributor in filing the tax returns and payment of the applicable taxes?	<p>A3. The PERA TCC shall be applied against the internal revenue taxes and the BIR Forms to be accomplished shall depend on the source of income of the qualified contributor from which the savings or contributions to his or her account where derived from.</p> <p><i>(Kindly refer to the list of applicable BIR forms identified according to the source of income of the qualified contributor as enumerated in the RMC.)</i></p> <p>In case of changes in the contributor's source of income during the taxable year, the PERA TCC shall contain such restrictions prescribing the type of taxes upon which the said certificate shall be applied to, based on the contributor's status/classification as indicated in the annual report of the PERA Administrator. Accordingly, the applicable internal revenue taxes shall be paid and the corresponding BIR forms to be accomplished.</p> <p><i>(Kindly refer to the list of applicable BIR forms identified according to the status/classification of the qualified contributor.)</i></p>

Issues	Guidelines/Procedures
<p>Q4. How will the qualified contributor accomplish the tax return using the PERA TCC?</p>	<p>A4. The amount of the PERA TCC shall be indicated in the tax return as deduction from the tax due of the contributor. Specifically, there is a need to indicate the phrase "5% PERA TCC" and its corresponding amount in the boxes provided for in the line item of the tax return which states the phrase "Other Tax Credits/ Payments (specify)" located immediately after the line item stating "Tax Due".</p> <p>In case the amount of PERA TCC exceeds the tax due, net of the creditable taxes, the excess shall not be considered a refund but the same shall be eligible for the issuance of PERA TCC.</p>
<p>Q5. Where will the tax return be filed and the corresponding tax be paid?</p>	<p>A5. The accomplished tax return shall be filed using the eBIRForm facility and the tax due, if any, shall be paid using the available modes of payment of the BIR. The duly received hard copies of the tax returns, together with copy/ies of the PERA TCC and the other prescribed attachments, shall be submitted to the Revenue District Office (RDO) where the contributor is duly registered, pursuant to the existing revenue guidelines and procedures.</p>
<p>Q6. How can an employer utilize the PERA TCC in computing the withholding tax of the qualified contributor-employee?</p>	<p>A6. Upon receipt of the PERA TCC from the PERA Administrator, the qualified contributor-employee shall submit the same to his or her employer. The employer shall apply the amount of the PERA TCC in the annual year-end adjustments for computing the net withholding tax due of the qualified contributor-employee.</p> <p>If the total tax actually withheld and remitted to the BIR is more than the difference between the total tax due and the gross amount of PERA TCC, the excess shall be refunded to the qualified contributor-employee. However, if the gross amount of the PERA TCC shall exceed the total tax due, the excess shall be carried over and deducted from the withholding tax of the qualified contributor-employee in the next taxable year. On the other hand, the total amount actually withheld and remitted to the BIR shall be refunded by the employer to the qualified contributor-employee.</p>
<p>Q7. What will the employer do with the PERA TCC submitted by the qualified contributor-employee?</p>	<p>A7. The employer shall keep the submitted PERA TCC and produce the same when requested for inspection or verification by authorized BIR revenue personnel.</p> <p>Further, the applicable details of the certificate shall be indicated in the column provided for the purpose in the prescribed Annual Alphabetical List of Employees, including the Certificate of Compensation Payment/Tax Withheld for Compensation Payment With or Without Tax Withheld (BIR Form No. 2316) of the qualified contributor-employee.</p>
<p>Q8. How will the employer's contribution to the share in the qualified contributor-employee be declared as deduction from its income?</p>	<p>A8. For employers with share in its employee's PERA contribution, the employer's share not exceeding the total amount actually contributed may be reflected in the income tax return as deductible expense from its gross sales. For uniformity, the phrase "Share in Qualified Employee's PERA Contribution" shall be used as the account name.</p>

Issues	Guidelines/Procedures
<p>Q9. What shall be the liabilities of a qualified contributor who shall use a spurious PERA TCC for the payment of his or her internal revenue taxes?</p>	<p>A9. Without prejudice to the filing of appropriate criminal charges, the qualified contributor who uses spurious PERA TCC shall be liable to pay the amount utilized with 50% penalty for fraud and 12% interest per annum.</p>
<p>Q10. How shall the BIR validate the availments of PERA TCCs?</p>	<p>A10. For purposes of validating the availments of PERA TCCs, the Chief, Audit Information Tax Incentives & Exemption Division (AITIED) shall transmit to the concerned Office in the Information Systems Group (ISG) a list of taxpayers who are qualified contributors who have been issued PERA TCCs. The concerned ISG Office shall generate a report containing, among others, the qualified contributors who have deducted the amounts of PERA TCCs in their tax returns, including those deductions but without the corresponding information from the AITIED list. Copies of this report shall be transmitted to Chief, AITIED and the Chief, Collection Section of the concerned Revenue District Office.</p> <p>The Collection Section of the RDO shall perform the following procedures:</p> <ol style="list-style-type: none"> a. Collate the tax returns and attachments filed by the qualified contributors under their jurisdiction. b. Validate the correctness of the computations in the tax returns. c. Based on the list received from the concerned ISG Office, validate the PERA TCC(s) attached to the tax return. d. Encode in the ePERA system the validated amount of utilized PERA TCC within ten (10) days from the date of the tax return was filed in the eBIRForm facility. <p>In cases of non-availability of the online filing facility and the manual filing of tax returns should be made with the RDO (e.g., ONETT transactions), the validated amount of utilized PERA TCC shall be encoded immediately upon receipt of the tax return.</p> <ol style="list-style-type: none"> e. Send written notice to the qualified contributors for the collection of the tax deficiency and penalties, if any, by reason of wrongful computation of taxes or by reason of the use of spurious PERA TCC.

RMC No. 1-2021 circularizes the consolidated Price of Sugar Millsite for the Month of November 2020.

RMC No. 2-2021 prescribes the guidelines relative to the Postponement of Effectivity of Enlisting/Delisting of Large Taxpayers.

RMC No. 5-2021 provides the simplified policies on the Application for Registration of CAS, CBA and/or its Components, including the ESS, Middleware and Other Similar Systems.

RMC No. 1-2021 issued on 5 January 2021

- ▶ While the Sugar Regulatory (Administration)-issued weekly Price of Sugar Millsite reflects the comparative prices between the previous and current years, the consolidated schedule (Annex "A") on the weekly issuance of Operations Memoranda (OM), more particularly OM Nos. 79-2020, 81-2020, 88-2020 and 90-2020 contains only that of the current year for purposes of imposing the 1% expanded withholding tax on sugar prescribed under the provisions of RR No. 2-98, as amended by RR No. 11-2014.

RMC No. 2-2021 issued on 8 January 2021

Bases: RMC No. 112-2020

- ▶ The transactions of affected enlisted taxpayers shall remain to be handled by the RDO where they are registered prior to 1 July 2020.

The transactions of delisted taxpayers will now be handled by the RDO having jurisdiction over the said taxpayers.

RMC No. 5-2021 issued on 8 January 2021

- ▶ All taxpayers intending to use CAS, CBA and/or its components, including the ESS, Middleware and other similar systems shall not be required to secure Permit to Use (PTU), instead, shall be registered subject to the following policies:
 1. Register the "System" to the Revenue District Office (RDO) where the taxpayer is registered. BIR Form No. 1900 (Application for Authority to Use Computerized Accounting System or Components thereof/Loose-Leaf Books of Accounts) shall no longer be required for the submission of application for registration of the "System".
 2. When discovered to have violated the standards during post-evaluation or audit, the taxpayer-user shall be subject to penalties provided under RMO No. 7-2015 and other existing revenue issuances.
 3. Upon submission of complete documentary requirements, an Acknowledgement Certificate (AC) shall be issued within 3 working days from receipt of the complete documents by the RDO where the taxpayer-user of the system is registered. Hence, Permit to Use CAS, CBA and/or Components shall no longer be required for the use and registration of the "System" upon approval of this Circular.
 4. System demonstration or pre-evaluation shall not be required prior to the use of the "System". However, post-evaluation shall be conducted by the concerned RDO to determine compliance of the "System" registered with the Bureau.
 5. All taxpayers with existing PTU CAS, CBA and/or its Components shall NOT be required to apply for registration. The approved PTU previously issued by the Bureau shall still be valid subject to certain exceptions.

6. Taxpayer must submit a new application for registration in case of major system enhancement. In case a taxpayer is found to have used an enhanced/upgraded system/software/application without registering with BIR prior to the use of such enhanced "system", the PTU originally issued shall be automatically revoked or registration shall have no effect from the time the enhanced/upgraded system/software/application is adopted by the taxpayer and may still be subjected to applicable penalty under existing revenue issuances.
7. In case of any minor system enhancement, the taxpayer must submit a written notification to their registered RDO/LT Office stating the specific minor enhancements on the system.

RMC No. 7-2021 announces the availability of the Alphalist Data Entry and Validation Module (Version 7.0) and its Updated File Structures, Standard File Naming Convention, and JobAids.

RMC No. 7-2021 issued on 9 January 2021

- ▶ The enhanced version now includes the alphalists for the following:
 1. BIR Form Nos. 1600-PT, 1600- V.T, 1604-C, 1604-F, 1604-E; The new BIR Form No. 1621 (Quarterly Remittance Return of Tax Withheld on the Amount Withdrawn from Decedent's Deposit Account).
- ▶ In addition, the generation process of the annual alphalists for 1604-E and 1604-F has been simplified under the Quarterly Alphalists of Payees, thus eliminating the need of manual re-encoding the information.
- ▶ In this connection, the revised file structures of the alphalists enumerated below, the revised standard file naming convention, and the revised job aids are contained in Annexes "A", "B", and "C" of this Circular.

RMC No. 8-2021 Circularizes RA No. 11467 which provided, among others, the VAT exemption of sale or importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension, and the increase in excise taxes on alcohol products, tobacco products and e-cigarettes.

RMC No. 8-2021 issued on 8 January 2021

- ▶ The effectivity is on 27 January 2021.

RMO No. 1-2021 prescribes the revised Office Audit Threshold for Cases to be Audited/Investigated by the OAS of the Assessment Division in the Regional Offices.

RMO No. 1-2021 issued on 4 January 2021

- ▶ The threshold for the issuance of electronic Letters of Authority (eLAs) to cover the audit/investigation of taxpayers under the jurisdiction of the Regional Office shall be as follows:

RR	RDOs	Gross Sales/Receipts
1 - Calasiao	All RDOs	Ten Million Pesos (P10,000,000.00) and below
2 - Cordillera Administrative Region	8 - Baguio City 9 - La Trinidad, Benguet	Five Million Pesos (P5,000,000.00) and below
	7 - Bangued, Abra 10 - Bontoc, Mt. Province 11 - Tabuk City, Kalinga 12 - Lagawe, Ifugao	Three Million Pesos (P3,000,000.00) and below

RR	RDOs	Gross Sales/Receipts
3 - Tuguegarao City	13 - Tuguegarao, Cagayan 15 - Naguilan, Isabela	P5,000,000.00 and below
	14 - Bayombong, Nueva Viscaya 16 - Cabarroguis, Quirino	P3,000,000.00 and below
4 - San Fernando, Pampanga	21A - North Pampanga 21B - South Pampanga	P10,000,000.00 and below
	17A - Tarlac, Tarlac City 17B - Paniqui, Tarlac 18 - Olongapo City 19 - Subic Bay Freeport Zone 20 - Balanga, Bataan 21C - Clark Freeport Zone 22 - Baler, Aurora 23A - North Nueva Ecija 23B - South Nueva Ecija 23B - South Nueva Ecija	P5,000,000.00 and below
5 - Caloocan City	All RDOs	P10,000,000.00 and below
6 - Manila	29 - Tondo - San Nicolas 30 - Binondo 31 - Sta. Cruz 32 - Quiapo-Sampaloc- Sta. Mesa-San Miguel 33 - Intramuros-Ermita- Malate 34 - Paco-Pandacan-Sta. Ana-San Andres	P10,000,000.00 and below
	36 - Puerto Princesa	P3,000,000.00 and below
7A - Quezon City	All RDOs	Twenty Million Pesos (P20,000,000.00) and below
7B - East NCR	All RDOs	P20,000,000.00 and below
8A - Makati City	All RDOs	P20,000,000.00 and below
8B - South NCR	All RDOs	P20,000,000.00 and below
9A - CaBaMiRo	54A - Trece Martirez City, East Cavite 54B - Kawit, West Cavite 58 - Batangas City 59 - Lipa City	P10,000,000.00 and below
	35 - Romblon 37 - San Jose, Occidental Mindoro 63 - Calapan, Oriental Mindoro	P5,000,000.00 and below

RR	RDOs	Gross Sales/Receipts
9B - LaQueMar	55 - San Pablo City 56 - Calamba, Laguna 57 - Binan, Laguna 60 - Lucena City	P10,000,000.00 and below
	61 - Gumaca, Quezon 62 - Boac, Marinduque	P5,000,000.00 and below
10 - Legazpi City	64 - Talisay, Camarines Norte 65 - Naga City 66 - Iriga City 67 - Legazpi City, Albay 68 - Sorsogon, Sorsogon	P5,000,000.00 and below
	69 - Virac, Catanduanes 70 - Masbate, Masbate	P3,000,000.00 and below
11 - Iloilo City	74 - Iloilo City	P10,000,000.00 and below
	71 - Kalibo, Aklan 72 - Roxas City 73 - San Jose, Antique 75 - Zarraga, Iloilo City	P5,000,000.00 and below
12 - Bacolod City	77 - Bacolod City	P10,000,000.00 and below
	76 - Victorias City, Negros Occidental 78 - Binalbagan, Negros Occidental 79 - Dumaguete City	P5,000,000.00 and below
13 - Cebu City	80 - Mandaue City 81 - Cebu City North 82 - Cebu City South	P10,000,000.00 and below
	83 - Talisay, Cebu 84 - Tagbilaran City	P5,000,000.00 and below
14 - Eastern Visayas Region	88 - Tacloban City	P5,000,000.00 and below
	85 - Catarman, Northern Samar 86 - Borongan, Eastern Samar 87 - Calbayog City, Samar 89 - Ormoc City 90 - Maasin, Southern Leyte	P3,000,000.00 and below
15 - Zamboanga City	91 - Dipolog City 93A - Zamboanga City, Zamboanga del Sur	P5,000,000.00 and below
	92 - Pagadian City, Zamboanga del Sur 93B - Zamboanga Sibugay 94 - Isabela, Basilan 95 - Jolo, Sulu 96 - Bongao, Tawi-Tawi	P3,000,000.00 and below

RR	RDOs	Gross Sales/Receipts
16 - Cagayan de Oro City	98 - Cagayan de Oro City	P10,000,000.00 and below
	97 - Gingoog City	P5,000,000.00 and below
	99 - Malaybalay, Bukidnon	
	100 - Ozamis City	
	101 - Iligan City	
	102 - Marawi City	
17 - Butuan City	103 - Butuan City	P5,000,000.00 and below
	104 - Bayugan, Agusan del Sur	P3,000,000.00 and below
	105 - Surigao City	
	106 - Tandag, Surigao del Sur	
18 - Koronadal City	107 - Cotabato City	P3,000,000.00 and below
	108 - Kidapawan, North Cotabato	
	109 - Tacurong, Sultan Kudarat	P5,000,000.00 and below
	110 - General Santos City	
19 - Davao City	111 - Koronadal, South Cotabato	P5,000,000.00 and below
	112 - Tagum, Davao Del Norte	
	114 - Mati, Davao Oriental	
	115 - Digos, Davao del Sur	
	113A - West Davao City 113B - East Davao City	P10,000,000.00 and below

Banks and Other Financial Institution

Restructured Service Fees for Bank's Deposit and Withdrawal Transactions

Circular No. 1106 dated 23 December 2020

Circular No. 1106 publishes Resolution No. 1658 dated 17 December 2020 approving the following amendments to the Manual of Regulations for Banks (MORB) and shall govern the transactions of banks with Cash Department (CD), Metro Manila Currency Operations Sub-Sector (MCOSS) and the Regional Offices and Branches, and Regional Operations Sub-Sector (ROSS):

- a) Restructuring of service fees for banks' deposit and withdrawal transactions with the Bangko Sentral,

Type of Transaction	Applicable Service Fees
Fit banknote deposits	PHP 200 per bundle
Unfit banknote deposits	None
Mixed banknote deposits ¹	PHP 240 per bundle
Fit banknotes found in unfit banknote deposits verified	PHP 300 per bundle
Unfit banknotes found in fit banknote deposits verified ¹	PHP 240 per bundle ²

¹ Rebate/Refund shall be based on total banknote withdrawals (fit and new)

² Total incentives shall not exceed total service fee of bank on withdrawal transactions

Circular No. 1106 provides for restructured service fees for Banks' Deposit and withdrawal transactions.

- b) Reinstatement of the service fees on new and fit banknote withdrawals,

Denomination	Service Fee per Bundle (In PHP)	
	New	Fit
1000	200.00	140.00
500	100.00	70.00
200	40.00	28.00
100	20.00	14.00
50	10.00	7.00
20	4.00	3.00

- c) Provision of rebates, refunds, and incentives for unfit banknote deposits which banks may avail within 3 years:

Denomination	Rebate/Refund Amount per Bundle of Unfit (In PHP) ¹		Incentive for unfit Banknote Deposits in Excess of Total Withdrawals (per bundle, in PHP) ²
	New	Fit	
1000	160.00	100.00	50.00
500	60.00	30.00	15.00
200	40.00	28.00	14.00
100	20.00	14.00	7.00
50	10.00	7.00	3.50
20	4.00	3.00	1.50

¹ Rebate/Refund shall be based on total banknote withdrawals (fit and new)

² Total incentives shall not exceed total service fee of bank on withdrawal transactions

- d) imposition of P5,000 penalty for every cancelled withdrawal transaction.

Prudential Requirements for Designated Clearing and Settlement Banks

Circular No. 1107 dated 23 December 2020

Circular No. 1107 publishes Resolution No. 1606 dated 10 December 2020 approving the prudential requirements for designated clearing and settlement banks for purposes of compliance with directors, officers, stockholders and their related interests (DOSRI) regulations, as well as foreign currency deposit unit (FCDU asset cover and minimum capital requirements.

Transactions not covered now include (1) Interbank call loan transactions; and (2) Short-term exposures of designated clearing and settlement bank to other financial institutions that own or control directly or indirectly such clearing and settlement bank, pursuant to its function as designated clearing and settlement bank.

As to capital requirements of foreign banks, any net due from head office, branches and subsidiaries outside the Philippines, excluding accumulated net earnings shall be deducted from capital. On the other hand, as to risk-based capital for foreign bank branch, any net due from head office, branches, and subsidiaries outside the Philippines excluding accumulated net earnings shall be deducted from CET1 capital.

Circular No. 1107 provides prudential requirements for designated clearing and settlement banks.

Amendment to Memorandum M-2020-080 dated 9 October 2020 on the Electronic Submission of the EPFS Monthly Report Template

Memorandum No. 093 provides for amendment to Memorandum M-2020-080 on the Electronic Submission of the EPFS Monthly Report Template.

Memorandum No. 093 dated 16 December 2020

All BSP Supervised Financial Institutions (BSFIs) shall observe the following revised process and deadline for the submission of the EPFS monthly report template covering the years 2018, 2019, and 2020:

- ▶ The new deadline for the submission of the monthly report template for the years 2018, 2019 and 2020 shall be on or before 29 January 2021. There shall be a total of 14 email submissions, as detailed in the succeeding sections.
- ▶ Only one report each covering the years 2018 and 2019, respectively, shall be submitted using the monthly report template. The submissions for 2018 and 2019 shall be considered as a December submission covering the cumulative transactions for that particular year and shall use the following subject line - EPFS , DD MMMM YYYY (e.g. 31 December 2018 or 2019).
- ▶ The reports for the years 2018 and 2019 using the monthly report template shall be submitted in separate emails along with the corresponding Control Profflist and following the file names prescribed under Memorandum M-2020-080.
- ▶ The monthly reports beginning January 2020 shall cover each particular month and shall be submitted as one month per email for a total of 12 email submissions all due on or before 29 January 2021.

Single Reserve Week from 18 to 31 December 2020 and the Corresponding Computation for the Single Reserve Week

Memorandum No. 094 provides for the Single Reserve Week from 18 to 31 December 2020 and the corresponding computation for the Single Reserve Week

Memorandum No. 094 dated 18 December 2020

In computing the reserve requirement for reference weeks 18 to 24 December 2020 and 25 to 31 December 2020, please be guided by the following:

- ▶ The following dates are proclaimed non-working holidays, thus considered as non-reserve days:
 1. 25 December 2020, Friday - Christmas Day and 30 December 2020, Wednesday - Rizal Day as Regular Holidays; and
 2. 24 December 2020, Thursday and 31 December 2020, Thursday as Special Non-Working Days
- ▶ Accordingly, the reserve position as computed at the close of business of 23 December 2020 shall be carried over up to 27 December 2020. Likewise, the reserve position as computed at the close of business of 29 December 2020 shall be carried over up to 3 January 2021.
- ▶ The reserve weeks 18 to 24 December 2020 and 25 to 31 December 2020 shall be considered as a single reserve week for the purpose of determining "abuse" of the privilege of offsetting reserve deficiencies against excess reserve during that reserve week.

- ▶ The original deadlines for the two reserve reports ending 24 December 2020 and 31 December 2020, respectively, remains the same and shall be subject to the usual penalties for reporting violations.

Extension of the Temporary Relief Measure on the Transactions with PhilPaSS until the Last Business Day of Year 2021

Memorandum No. 095 provides extension of the Temporary Relief Measure on the transactions with PhilPaSS until the last business day of year 2021.

Memorandum No. 095 dated 16 December 2020

The temporary waiver of fees of fund transfer transactions made through the Philippine Payment and Settlement System (PhilPaSS) under the BSP Memorandum M-2020-027 dated 21 April 2020 is extended until the last business day of year 2021.

Availability and Security of Automated Teller Machines (ATMs) and Digital Financial Services (DFS)

Memorandum No. 096 provides for the availability and security of ATMs and DFS.

Memorandum No. 096 dated 21 December 2020

All BSP Supervised Financial Institutions (BSFIs) shall actively augment existing capabilities and implement strategies to fulfill customer requirements. Given the continuing community quarantine protocols, BSFIs play a crucial role to ensure that ATMs have sufficient levels of cash and their operations comply with physical distancing protocols.

Further, BSFIs should sustain the public's growing preference to utilize digital channels in fulfilling basic financial and payment transactions. Cyberattacks and electronic fraud are likewise observed to be escalating during long weekends and holidays. Hence, it is crucial for BSFIs to put in place mechanisms, resources and processes to ensure security of DFS and responsiveness to customer concerns. Likewise, customers should also be reminded to be alert and immediately report to concerned BSFIs any unusual transactions or activities in their accounts.

Regulatory Relief on the Non-imposition of Sanctions for Breach in Single Borrower's Limit by Foreign Bank Branches Established Prior to Republic Act No. 10641

Memorandum No. 002 provides for the Regulatory Relief on the Non-imposition of Sanctions for Breach in Single Borrower's Limit by Foreign Bank Branches Established Prior to Republic Act No. 10641.

Memorandum No. 002 dated January 4, 2021

The regulatory relief shall cover all Foreign Bank Branches Established Prior to Republic Act No. 10641.

Existing foreign bank branches established in the Philippines prior to Republic Act No. 10641 that breach the SBL shall not be subject to sanctions prescribed under Section 362 of the MORB until 31 December 2021: Provided, That the amount of the new loan, credit accommodation, or guarantee extended as well as the restructured, renewed, and refinanced existing credit exposures, beginning 01 January 2021 until 31 December 2021, shall not exceed the prescribed percentage limit using as reference point twice the level of capital as defined under Section 103 of the MORB (Capital requirements of foreign bank).

Guidelines on the Electronic Submission of the Report on RRDS Out of the Fair Value Category

Memorandum No. 003 provides for guidelines on the electronic submission of the Report on RRDS out of the Fair Value Category.

Memorandum No. 003 dated 8 January 2021

The guidelines shall cover all BSP Supervised Financial Institutions (BSFIs).

The following guidelines shall be observed for the electronic submission of the RRDS on or before 29 January 2021:

- ▶ The prescribed Data Entry Template (DET) and the corresponding Control Prooflist (CP) of the RRDS can be downloaded from http://www.bsp.gov.ph/SES/reporting_templates.
- ▶ The DET with its corresponding scanned CP in Portable Document Format (PDF) duly signed by the authorized officials of the BSFI shall be electronically transmitted on or before 29 January 2021, to the prescribed e-mail address, DSA-RRDS@bsp.gov.ph, using the required format for the subject, as follows:

“RRDS <space> <Name of BSFI>, (space) <Reference Period>, as illustrated below:

To : DSA-RRDS@bsp.gov.ph

Subject : RRDS <Name of BSFI>, DD MMMM YYYY (e.g. 30 September 2020)

And using the following prescribed file names and file format:

File	File name	File format
Data entry template	Reclassification report	xls
Control prooflist	Reclassification report-control prooflist	pdf

- ▶ Only electronic submissions originating from officially registered email address/es of the BSFIs shall be recognized and accepted by the DSA. The acknowledgment receipt for the submitted RRDS report and its corresponding validation results, upon availability, will be sent to the same registered email address/es.
- ▶ Hard copy submission shall not be accepted. Covered BSFIs that are unable to transmit via email may submit the DET and its accompanying scanned CP using any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

The Director
Department of Supervisory Analytics (DSA)
Bangko Sentral ng Pilipinas
11th Floor, Multi-Storey Building
BSP Complex, A. Mabini Street, Malate
1004 Manila

- ▶ Note that the following may result in an erroneous or failed submission, among others:
 1. Failure to use/send the correct/updated templates;
 2. Failure to use an officially registered email address;
 3. Transmitting to the wrong email address;
 4. Failure to use the prescribed subject line or reporting date;
 5. Failure to use the prescribed file names;
 6. Failure to use the correct file formats; and
 7. Incomplete entry in the updated templates.

Memorandum No. 004 provides for retention of existing procedures on deposits and withdrawals.

Retention of Existing Procedures on Deposits and Withdrawals

Memorandum No. 004 dated 11 January 2021:

This shall apply to all Authorized Agent Banks (AABs).

The Guidelines and Procedures Governing Currency Deposits and Withdrawals of Banks for Credit to and Debit from their Demand Deposit Accounts with the Bangko Sentral (Appendix 84 of the MORB, Annex A) shall remain effective.

Further, the following procedures shall also govern deposit and withdrawal transactions of authorized agent banks (AABs) with the Bangko Sentral:

- ▶ For transactions with the Cash Department (CD) of the Payments and Currency Management Operations Sub-Sector (PCMOSS)
 1. AABs shall issue a letter of authority in favor of the Bangko Sentral, through the PCMOSS, to debit their respective Demand Deposit Accounts (DDAs) maintained with the Bangko Sentral, for the service fee on their transactions on the day of deposit/withdrawal.
 2. AABs shall prepare separate deposit slip/s for new/fit, mixed and unfit notes, which will serve as basis for the imposition of applicable service fees for new/fit and mixed notes.
- ▶ For transactions with the BSP Regional Offices and Branches (ROBs) of the Regional Operations Sub-sector (ROSS)
 1. AABs shall issue a letter of authority in favor of the Bangko Sentral, through ROSS, to debit their respective DDA maintained with the Bangko Sentral for the service fee on their transactions on the day of deposit/withdrawal.
 2. AABs shall continue to prepare separate deposit slip/s for fit and unfit notes, which will serve as the basis for the imposition of applicable service fees for fit notes.
 3. The BSP ROBs shall accept deposit of bundled fit notes packed in sealed plastic containers in uniform quantity of 20 bundles of 1 or various denominations.

Bureau of Customs (BOC)

Accreditation and Regulation of BOC Value Added Service Providers (VASP)

Customs Administrative Order (CAO) No. 14-2020

- ▶ The CAO covers the accreditation and supervision of the VASP.
- ▶ VASP shall refer to any BOC-accredited Information and Communications Technology (ICT) company who may provide the services enumerated under this CAO and collect transaction fees as authorized by the BOC.
- ▶ VASP services include, but are not limited to, the following:
 1. Provide technical solutions to supplement the capabilities of the BOC e-Customs systems;

CAO No. 14-2020 establishes the administrative and operational guidelines for the accreditation and supervision of VASP pursuant to Section 109, Chapter 2, Title I, Sections 1200, Chapter 1 Title XII, Section 1513, Title XV and other relevant provisions of the CMTA.

2. Provide available VASP technical assistance nationwide;
 3. Provide support to the BOC in prosecuting violations of tariff and customs laws;
 4. Receive and transmit electronic data to concerned BOC offices and stakeholders;
 5. Act on the responses and messages returned by the BOC gateway/system;
 6. Other services as may defined and determined by the BOC Commissioner.
- ▶ The accreditation of VASP/s shall be valid for a period of 3 years.
 - ▶ The accreditation may be renewed after due evaluation of the quality of their performance as measured by the SLA and continued compliance with the eligibility requirements.
 1. The validity of the renewed accreditation shall be a period of 1 year.
 2. The application for renewal shall be filed at least 1 month prior to the expiration of the original period.
 3. if the BOC fails to act thereon, the accreditation shall automatically be extended on a daily basis.
 - ▶ The BOC may, subject to prior notice, pre-terminate the accreditation of the VASP for any of the following grounds:
 1. Violation of the provisions of CAO No. 14-2020 and related rules and regulations;
 2. Violation of the CMTA, Data Privacy Act, Philippine Competition Act and other related laws;
 3. Actions inimical to the security and integrity of BOC operations; and
 4. Other grounds as provided under this CAO or as determined by the BOC.
 - ▶ For purposes of customs procedure, electronic data transmitted by the VASPs, such as documents, permits, licenses or certificates shall be acceptable and shall have legal effect, validity or enforceability as any other document or legal writing. Upon compliance by the VASP of the requirements, the BOC shall recognize the authenticity and reliability of the electronic documents by transmitting the acceptance or approval of the same in the form of electronic data messages or electronic documents.
 - ▶ CAO No. 14-2020 shall take effect after 30 days following the completion of its publication at the Official Gazette or a newspaper of general circulation.

(Editor's Note: CAO No. 14-2020 was published on 23 December 2020 in The Manila Times, p. C2)

Collection of General Safeguard Duty on Imported Cement pursuant to Department of Trade and Industry (DTI) Order No. 20-08

CMO No. 29-2020 covers the Collection of General Safeguard Duty on Imported Cement pursuant to Department of Trade and Industry (DTI) Order No. 20-08 issued on 26 October 2020.

Customs Memorandum Order (CMO) No. 29-2020

- ▶ CMO 29-2020 aims to inform the BOC officers as well as the public for the imposition and collection of a definitive safeguard duty of Php 245 per metric ton (mt) or Php 9.80 per 40kg bag for all imported cement classified under AHTN Headings 2523.29.90 and 2523.90.00, regardless of origin and those which were imported within the period of 22 October 2020 to 21 October 2021.
- ▶ All District Collectors are directed to impose and collect the Safeguard Duties provided under the DTI Order and within the period stated immediately upon receipt of the CMO pursuant to Rule 13.3 (b) of the Implementing Rules and Regulations Governing the Imposition of Safeguard Measure under Republic Act (RA) No. 8800 (Safeguard Measures Act).

(Editor's Note: CMO No. 29-2020 is yet to be published)

Guidelines for the Implementation of the General Transport Surety Bond (GTSB) through Automated Bonds Management System (ABMS)

CMO No. 30-2020 provides the guidelines to implement the ABMS for GTSB in all customs port.

CMO No. 30-2020

- ▶ CMO 30-2020 shall apply to all Transit Bond Accounts opened under the Electronic to Mobile (E2M) Customs System in all Collection Districts, including sub-ports and other BOC offices.
- ▶ An ABMS is a BOC-wide system for processing bond transactions established pursuant to CMO No. 14-2012. It monitors and ages bond balances and flags those that have matured.
- ▶ The guidelines are as follows:
 1. All surety companies must be registered in the Client Profile Registration System (CPRS) of the E2M Customs System.
 2. Transit bond policies filed shall be approved at the Bonds Division of the port.
 3. Approved bond policies filed on the current year at the port of discharge will expire on the 31st day of January of the following year.
 4. Surety companies shall apply for GTSB in the port where the goods are discharged and shall only be used at the port it was applied for.
 5. Approved Transit bond policy can be applied to multiple electronically lodged goods declaration of the importer as long as the policy bond has sufficient funds or available amount.
 6. Only the approved bond policy can be used on the Terms of Payment upon filing of the Transit Single Administrative Document (TSAD) in the E2M system and Bond Credit as payment instrument (payment code 52) shall be used. Upon registration of the TSAD, the ABMS shall change the status of the bond policy to CHARGED if there is available fund balance.

7. All Transit shipments transferred to Free Zones from the port of discharge must be Tagged Arrived in the E2M Transit System.
 8. Once the TSAD is Tagged Arrived by the authorized Customs Officer at the port of destination, the ABMS shall automatically revert the amount charged to the original bond balance.
 9. The failure of the importer to cause the timely arrival of the GTSB-secured containers at the designated destination without valid reason shall be a sufficient ground for the forfeiture of the bond.
- ▶ CMO No. 30-2020 shall take effect 15 days after its complete publication in the Official Gazette or newspaper of general circulation.

(Editor's Note: CMO No. 30-2020 was published on 13 January 2021 in The Manila Times, p. A7)

Board of Investments (BOI)

BOI Memorandum Circular (MC) No. 11 Series of 2020 dated 15 October 2020 (posted on the BOI website on 6)

- ▶ The extension on the compliance requirements of BOI-registered enterprises was issued due to the severe disruption of economic activities caused by COVID-19 pandemic.
- ▶ The one-year extension to comply with or submit compliance requirements shall apply to the following terms and conditions:

SECTOR	TERMS AND CONDITIONS
General	1. Environmental Compliance Certificate (ECC) pursuant to P.D. No. 1586
	2. Proof of compliance on the Tree Planting Program
	3. Certification on compliance with National Framework Strategy on Climate Change
	4. DOLE Certificate of Compliance on existing labor laws, rules and regulations
	5. Certifications based on internationally-recognized standards such as ISO certification, quality standards (e.g., ICC, CE) or other similar certification
	6. Proof of project location outside Metro Manila
Housing	7. 20% socialized housing requirement (SHR)
	8. DAR Exemption/Conversion Order
	9. HLURB License to Sell and Registration
	10. PCAB License
Domestic Industrial Zone Operators	11. Land Use Permits
	12. Certification of at least five (5) locators in an industrial zone
Shipping/Transport	13. MARINA Certificate of Accreditation
Waste Treatment Facility Operators	14. Treatment, Storage and Disposal Registration Certificate

One-year extension on the compliance of BOI-registered enterprises with the terms and conditions of their BOI-registered projects.

SECTOR	TERMS AND CONDITIONS
Dressing Plant/Cold Storage	15. License to Operate (LTO) issued by the National Meat Inspection Service (NMIS) as AAA Poultry Dressing Plant
Mining	16. MGB Certificate of Good Standing
Bulk Water Supply	17. NWRB Certificate of Public Convenience
	18. Philippine National Standards for Drinking Water
Telecommunications Infrastructure	19. DICT Endorsement Telecommunications Infrastructure
Telecommunications systems/facilities	20. Certificate of Public Convenience and Necessity (CPCN) or the appropriate permits and licenses of its telecommunications system/facilities
Creative Industries	21. Compliance with Philippine National Standards (PNS)
Manufacturing of housing components	22. AITECH Accreditation
Power	23. ERC Certification that ITH has been taken into consideration in the computation of generation rate
	24. Certificate of Endorsement for Renewable Energy Firm secured from Department of Energy
	25. Certificate of Compliance for Power Projects secured from Energy Regulatory Commission
	26. Renewable Energy Payment Agreement with the NGCP

- ▶ The concerned BOI-registered enterprise shall submit an Undertaking that it shall comply with the relevant compliance requirement within one year from approval of such request and shall refund the incentives granted if it fails to comply thereof.

Philippine Economic Zone Authority (PEZA)

PEZA Memorandum Circular (MC) No. 2021-04 dated 8 January 2021

- ▶ Assistance given to Ecozone I.T. Enterprises is further extended until 12 September 2021 which is the end of the period of the State of National Calamity due to the COVID-19 pandemic (under Presidential Proclamation No. 1021) or until such time that the Work from Home (WFH) Guidelines and Application Forms are issued.
- ▶ No prior LOA is required for the movement of I.T. equipment and other assets of Ecozone I.T. Enterprises from their PEZA-registered I.T. Center facilities. However, prior to the movement/withdrawal of I.T. equipment and other assets from their PEZA-registered I.T. Center facilities, certain documentary requirements shall be submitted and surety bond be deposited by the Ecozone I.T. Enterprise to the office of the PEZA Zone Manager of the PEZA I.T. Center where the I.T. equipment and other assets are located.

Extension of MC No. 2020-011 Entitled "PEZA Assistance to Ecozone I.T. Enterprises in Responding to COVID-19 (Corona Virus Disease)."

- ▶ Once PEZA issues the Guidelines and Application Forms for the WFH Arrangements, all Ecozone I.T. Enterprises which have implemented or will implement the movement of their equipment and other assets and assignment of personnel from their PEZA-registered I.T. Center locations to WFH operations or to non-PEZA registered sites shall submit to PEZA the required documents provided under such guidelines within thirty (30) days from the issuance of the said Guidelines.

Other BSP Updates

Guidelines on the Submission of QRACP for the Generation of the CPPI

Memorandum No. 097 provides for the guidelines on the submission of QRACP for the generation of the CPPI.

Memorandum No. 097 dated 28 December 2020

The following guidelines on the submission of the QRACP shall be observed:

- ▶ The QRACP reporting template can be downloaded from BSP website through this link: <https://www.bsp.gov.ph/Regulations/Issuances/2020/CPPI Form.xls>.
- ▶ The submission schedule of the QRACP for the given reference period is seen in the table below:

Regerence Period	Submission Deadline*	Revised Submission Deadline
Q1 2019		Not later than 19 Feb 2021
Q2 2019		
Q3 2019		
Q4 2019		
Q1 2020		12 March 2021
Q2 2020		5 April 2021
Q3 2020		23 April 2021
Q4 2020		14 May 2021
Q1 2021	11 February 2021	5 July 2021
Q2 2021	12 May 2021	4 October 2021
Q3 2021	11 August 2021	3 December 2021
Q4 2021	11 February 2022	3 March 2022
Q1 2022	12 May 2022	3 June 2022
Q2 2022	11 August 2022	5 September 2022

* 30 banking days after the reference period

- ▶ Beginning Q3 2022, the submission of the DES-CPPI Form L (in excel format) and its scanned Certification Form, which has been duly notarized and signed by the authorized officials of the banks and saved as a Portable Document Format (PDF), shall follow the prescribed submission deadline indicated in said Circular.
- ▶ The QRACP shall be electronically submitted to e-mail address: at eslides@bsp.gov.ph. In the subject line of the email, the name of the bank and reference period should be indicated following the format below: "CPPf cBank name>, , "e.g., "CPP| Bank One, Q1 2019"
- ▶ The file name of QRACP shall follow the prescribed format below: "Reference Quarter," €.8., "Q1 2019 QRACP Bank One"

- ▶ Non-compliance with the reporting standards and failure to submit within the prescribed submission deadline shall be subject to monetary penalties applicable under Manual of Regulations for Banks.

Amendments to the Standard Operating Procedures for Philippine Holidays

Memorandum No. 001 provides for the amendments to the SOP for Philippine Holidays.

Memorandum No. 001 dated 11 January 2021

This shall cover all Banks and Quasi-Banks (QBs).

The Standard Operating Procedures (SOP) for Philippine Holidays as provided under Appendix 88/Q-Sf of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBF), respectively, is hereby amended as part of the thrust of the Bangko Sentral to support the domestic financial markets.

The revised SOP aims to provide clarity on the Bangko Sentral services available on holidays involving only the public sector and in emergency situations. It also provides the treatment of said days for purposes of determining compliance with the reserve requirements.

Report on the Risk Assessment of Cash, Cross-Border and Cross-Sector Transactions

Memorandum No. 005 provides for report on the risk assessment of Cash, Cross-Border and Cross-Sector Transactions.

Memorandum No. 005 dated 13 January 2021:

This shall apply to all BSP-Supervised Financial Institutions (BSFIs).

The report on risk assessment of cash, cross-border, and cross-sector transactions is part of the broader sectoral risk assessment (SRA) being conducted by the Bangko Sentral. It represents the first phase of the SRA that focused on the assessment of risks attendant to cash, cross-border, and cross-sector transactions. The assessment seeks to understand, analyze, and assess the ML/TF/PF risks arising from cash transactions of banks and other BSFIs, the flow of suspected criminal proceeds through cross-border transactions, and the risks across certain sectors.

BSFIs are expected to consider the findings and conclusions in the report in their respective institutional risk assessments and implement necessary measures to address the identified risk areas.

Advisory on Organization Changes in the Payments and Currency Management Operations Sub-Sector

Memorandum No. 006 provides for advisory on organization changes in the Payments and Currency Management Operations Sub-Sector.

Memorandum No. 006 dated 14 January 2021:

This shall apply to all Authorized Agent Banks (AABs).

Under the Payments and Currency Management Sector (PCMS) is the restructured Payments and Currency Management Operations Sub-Sector (PCMOSS, formerly the Metro Manila Currency Operations Sub-Sector), which is mandated to oversee the operations and activities of the Cash Department (CD) and the Payments and Settlements Office (PSO).

The PCMOSS shall lead the development and implementation of tactical strategies to ensure efficient currency distribution, and sound and secure settlement of financial market transactions and other critical interbank fund transfers through the BSP-operated Philippine Payment and Settlement System (PhilPaSS). It shall ensure timely and adequate currency distribution in Metro Manila and other assigned areas. It shall also be responsible for the retirement of unfit currency notes and coins and the promotion of proactive partnerships with AABs, government agencies, and private institutions. Moreover, it shall maintain the efficient and safe conduct of settlement transactions in support of the smooth functioning of the financial system and the digital transformation initiative of the BSP.

SEC Filing, Payments and Other Deadlines

2020 Compliance Officer's Certification

SEC Memorandum Circular No. 36 Series of 2020 dated 22 December 2020

- ▶ The Certification shall also identify and explain any deviation to the recommendations provided under the Corporate Governance Code, if applicable.
- ▶ It shall be signed under oath by the company's Compliance Officer and countersigned by its President or Chief Executive Officer.
- ▶ Three (3) copies of a duly accomplished, signed and notarized CG Form-2020 shall be submitted to the Commission on or before 29 January 2021 and shall cover all relevant information for the covered year 2020.
- ▶ PCs and RIs that are listed in the Philippine Stock Exchange are excluded from the coverage of the circular.
- ▶ Publicly-listed PCs and RIs shall continue to submit an Integrated Annual Corporate Governance Report in accordance with SEC Memorandum Circular No. 15, Series of 2017.
- ▶ Non-compliance with the above requirement shall subject erring companies to the following penalties.

(Editor's Note: This circular was published in the Philippine Star and Manila Standard on 13 January 2021. It shall take effect 15 days after publication, or on 28 January 2021).

SEC payment facilities

SEC Notice Series of 2021 dated 8 January 2021

However, the cashiers at the SEC Satellite Offices will remain closed until further notice.

Public Companies (PCs) and Registered Issuers (RIs) shall be required to submit a Compliance Officer's Certification, in lieu of the Annual Corporate Governance Report, certifying that the company has substantially adopted in its Manual on Corporate Governance all of the recommendations under the Code of Corporate Governance for PCs and RIs.

The SEC promulgates that the SEC payment facilities at the SEC Main Office (PICC Complex, Pasay City) and SEC Office (Ortigas, EDSA Mandaluyong City) will remain open from Monday to Friday, except holidays.

Notice to Retain Specific Corporate Term

The SEC reminds existing corporations, registered prior to the effectivity of the Revised Corporation Code (RCC) on 23 February 2019, who intend to retain their corporate term to file the Notice to Retain Specific Corporate Term on or before 23 February 2021.

SEC Notice Series of 2021 dated 13 January 2021

Existing corporations may file the Notice with attached Director's Certificate electronically through the e-mail, MC22_S2020@sec.gov.ph. Hard copies of the Notice and Director's Certificate must also be formally filed with the Company Registration and Monitoring Department (CRMD) Receiving Unit for the issuance of the *Certificate of Filing of Notice to Retain Specific Corporate Term*.

Corporations who fail to file the Notice by 23 February 2021 shall be deemed to have selected a perpetual term.

Creation of primary and alternative email addresses and mobile numbers

The SEC clarifies that SEC Memorandum Circular No. 28, Series of 2020, which requires corporations, partnerships, associations and individuals to create and/or designate primary and alternative email addresses and mobile numbers for transactions with the Commission, covers and applies to corporations regulated and supervised by the Markets and Securities Regulations Department.

SEC Notice Series of 2021 dated 18 January 2021

The SEC reiterates that the deadline for submission of the forms and notices without penalty is on 22 February 2021 as provided under SEC Notice dated 28 December 2020. The online submission, via MC28_S2020@sec.gov.ph, must be done on or before the said deadline, while the filing of the hardcopies with the ICTD-ERMD Receiving Unit or through utilization of accredited courier services or PhilPost shall be optional.

Other SEC Updates

Financial Reporting Relief in light of Covid-19 Pandemic

SEC Memorandum Circular No. 35 Series of 2020 dated 28 December 2020

FCs, LCs and MF-NGOs shall continue to report actual past due and nonperforming loans and provision for credit losses in their reports submitted to the Corporate Governance and Finance Department. The accounting relief is considered a deviation from the requirements of PFRS, PFRS for SMEs and PFRS for SEs.

For FCs, LCs and MF-NGOs that opts to avail of the relief should adopt the following:

- ▶ Prepare their Audited Financial Statements (AFS) in accordance with an industry-specific framework, as modified by the application of the financial reporting reliefs issued and approved by the SEC.
- ▶ Specify in the "*Basis of Preparation of the Financial Statements*" section of the financial statements the relief availed of and indicate that the availment thereof covers only current-year transactions. The circular provides the prescribed wordings in the presentation in the financial statements.
- ▶ Disclose a qualitative disclosure of the impact of the relief availed of. The following information should be provided in tabular format in the Note to Financial Statements that contains the "*Basis for Preparation of the Financial Statements*":
 1. Impact on the affected financial statement line items if the provision for credit losses was measured and recorded in accordance with PFRS, PFRS for SMEs, or PFRS for SEs, as applicable (loans and receivables, allowance for credit losses, provision for credit losses, retained earnings, deferred tax asset and expense, earnings per share [for listed companies], etc.)

2. Amount of allowance recognized/amortized for the period
 3. Balance of unrecognized (unamortized) allowance
- ▶ Comply with the requirements of the financial reporting standards in doing the above adjustments when it reverts to full PFRSs, PFRS for SMEs, or PFRS for SEs, as applicable, after the period of relief. The industry-specific accounting framework shall form part of the applicable financial reporting framework for the purpose of preparing and filing general purpose financial statements pursuant to the Revised SRC Rule 68.

For those which may avail of the relief but the impact on the financial statements is deemed not material:

- ▶ They may still represent in the notes that the financial statements are presented in full compliance with their applicable financial reporting framework. The disclosure requirements for such relief are not mandatory.

Where the external auditor has been engaged to perform an audit engagement in accordance with PSA on these annual financial statements, which have been prepared using PFRS/PFRS for SMEs/PFRS for SEs, as modified by the application of the financial reporting relief issued and approved by the SEC, it shall adopt the following:

- ▶ Reflect in the opinion paragraph that the financial statements are prepared in accordance with the compliance framework described in the notes to the financial statements.
- ▶ Include an Emphasis of Matter paragraph in the auditor's report to draw attention to the basis of accounting that has been used in the preparation of the financial statements.

Regulatory Relief Measures to Manage the Effect of the COVID-19 Pandemic

SEC Memorandum Circular No. 37 Series of 2020 dated 22 December 2020

Pursuant to R.A. No. 11494, or the Bayanihan to Recover as One Act, the SEC provides the following regulatory reliefs to FCs and LCs and the corresponding guidelines to help the covered entities manage the effects of the COVID-19 pandemic:

- ▶ *Relaxation of the required maintaining net worth of FCs under Section 11 of the R.A. No. 8556 or the Financing Company Act of 1998 (FCA) Implementing Rules and Regulations (IRR);*
- ▶ *Relaxation of the required investment in financing and lending activities under Section 9(b) of the FCA IRR, and Rule 3(f) of the R.A. No. 9474 or the Lending Company Regulation Act of 2007 (LCRA) IRR, subject to the evaluation of the SEC;*
- ▶ *Relaxation of the period of commencement of financing and lending operations under Sections 5(b) and 6(d) of the FCA IRR, and Rule 3(e) of the LCA IRR, respectively.*

SEC Memorandum Circular No. 37 Series of 2020 provides the following regulatory reliefs to FCs and LCs and the corresponding guidelines to help the covered entities manage the effects of the COVID-19 pandemic pursuant to R.A. No. 11494, or the Bayanihan to Recover as One Act.

FCs and LCs that intend to avail of the regulatory reliefs are required to submit: (1) a Letter-notification, signed by the company's President or, in his absence/unavailability, an officer of equivalent rank, stating the company's intention to avail of the regulatory reliefs, the specific regulatory relief to be availed, and the reason therefor, including a detailed explanation of the debt relief measures provided by the company to its borrowers and a statement that it is in good standing with the SEC, and; (2) Resolution of the Board of Directors authorizing the company to avail of the reliefs.

The SEC shall evaluate the application to avail of the regulatory reliefs on a case-to-case basis and shall communicate its decision on the application to the company.

The regulatory reliefs shall be effective for one (1) year from effectivity of the Memorandum Circular.

(Editor's Note: This circular was published in the Philippine Star and Manila Standard on 13 January 2021. It shall take effect immediately.)

Court of Tax Appeals Cases

Assessment

Negros Sugar Farmers Multi-Purpose Cooperative vs. Commissioner of Internal Revenue

CTA Case No. 9810 promulgated 11 January 2021

Facts:

On 29 December 2010, Company A received a Final letter of Demand (FLD) issued by the Bureau of Internal Revenue (BIR). On 21 January 2011, Company A filed a Letter of Protest which was received by the Regional Director (RD) of the BIR on 25 January 2011.

Subsequently, on 27 February 2013, on 22 March 2013, Company A received the Final Decision dated 23 February 2013 from the RD informing the former that the protest has been denied. Following this, Company A filed a Petition to Set Aside/ Recall Final Decision before the RD which was received on 23 April 2013.

On 21 June 2013, Company A received a letter from the RD reiterating the Final Decision which the former received last 27 February 2013.

On 19 July 2013, Company A filed an Administrative Appeal to the CIR dated 16 July 2013, which was denied by the CIR on 8 March 2018.

Finally, on 12 April 2018, Company A filed a Petition for Review with the CTA.

Issue:

Can the Company still appeal the decision of the CIR to the CTA?

Ruling:

No. Company A had already lost its chance to appeal before the CTA. The Petition for Review was only filed on 12 April 2018, which is five (5) years from the receipt of the Final Decision on Disputed Assessment (FDDA).

A MR, couched as "Petition to Set Aside/Recall Final Decision", of the decision of the CIR's authorized representative, filed before the latter, will not toll the running of the 30-day period to appeal such representative's decision to the CTA or the CIR himself.

Revenue Regulation (RR) No. 12-99, which implements the provisions on assessment in the Tax Code, provides that if the protest is denied, in whole or in part, by the CIR or his duly authorized representative, the taxpayer may appeal to the CTA within 30 days from the receipt of the decision, otherwise the assessment shall become final, executory, and demandable. If, however, the taxpayer elevates his protest to the CIR within 30 days from the receipt of the final decision of the CIR's duly authorized representative, the latter's decision shall not be considered final, executory, and demandable, in which case, the protest shall be decided by the CIR.

In this case, Company A's motion for reconsideration (MR) couched as "Petition to Set Aside/Recall Final Decision" before the RD did not toll the running of the 30-day period to appeal to the CTA or the CIR himself. Company A's proper recourse should have been to file the administrative appeal directly to the CIR or file a Petition for Review before the CTA within 30 days from its receipt of the RD's Final Decision.

Dizon Farms Produce, Inc. vs. Commissioner of Internal Revenue

CTA Case No. 9711 promulgated 05 January 2021

Section 3 of Revenue Regulations (RR) No. 12 - 99, as amended by RR 18 - 2013 expressly provides that if a taxpayer, within fifteen (15) days from the date of receipt of the Preliminary Assessment Notice, responds that he/it disagrees with the findings of deficiency tax or taxes, a Formal Letter of Demand / Final Assessment Notice shall be issued within fifteen (15) days from filing/submission of the taxpayer's response.

Facts:

On 19 December 2016, Company D received the Preliminary Assessment Notice (PAN) dated 16 December 2016, representing alleged deficiency taxes for taxable year 2013. On 3 January 2017, Company D filed the Protest Letter dated 3 January 2017 against the PAN. Subsequently, on 13 January 2017, D received the Formal Assessment Notice (FAN) and Assessment Notices, all dated 5 January 2017, representing alleged deficiency taxes for taxable year 2013.

Issue:

Is the assessment null and void for violating Company D's right to due process mandated under Section 228 of the Tax Code, and Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18 - 2013?

Ruling:

Yes. On 3 January 2017, Company D filed its Protest Letter against the PAN. Company D provided an explanation for every line item/finding of the Bureau of Internal Revenue (BIR) and undertaken to refute the alleged deficiency assessments as being without any legal or factual bases.

On 5 January 2017, however, just two (2) days from the filing of Company D's Protest Letter, the BIR issued the FAN and Assessment Notices. Unsurprisingly, the FAN contained the very same issues and same amount of deficiency taxes stated in the PAN, apart from the computation of interests.

Section 3 of RR No. 12-99, as amended by RR No. 18-2013, expressly provides that if the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD /FAN shall be issued within fifteen (15) days from filing/ submission of the taxpayer's response.

Based on the foregoing provision, part of the due process requirement in the issuance of a deficiency tax assessment is the issuance and service of a PAN. Moreover, a taxpayer is given fifteen (15) days from receipt of the PAN within which to respond thereto, before the issuance of the FAN by the BIR.

The right of taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto; and that the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.

Level Up, Inc. vs. Commissioner of Internal Revenue

CTA *En Banc* No. 2069 (CTA Case No. 9424) promulgated 6 January 2021

The taxpayer may only be assessed in the succeeding quarter the excess input tax has been carried forward. BIR cannot disallow excess input tax carried forward to succeeding period in the current period of assessment because it is beyond the scope of the assessment of the BIR.

SLP alone will not suffice to substantiate/establish existence of purchase of goods or services.

Facts:

Company A received a Letter of Authority (LOA) to examine its books of accounts and other accounting records for VAT for the period 1 January 2013 to 30 June 2013. BIR assessed the Company for VAT deficiency and interest stemmed from the denial of Input VAT not substantiated, and disallowance of excess Input VAT carried over to succeeding quarters.

According to the BIR, Section 110(B) of the Tax Code and Section 19 of RR No. 4-2007 clearly and categorically provide that any excess input tax accumulated for the period and from previous periods shall be carried over to the succeeding quarter or quarters. Thus, the BIR inferred that the carry-over of excess and unutilized Input VAT is mandatory and that it is only proper for it to disallow such excess input VAT on the period covered of the assessment since the same can be utilized by Company A in the succeeding quarter/s.

The CTA Second Division partially cancelled the deficiency VAT assessment against Company A, which prompted both parties to elevate to the CTA *En Banc*.

Issues:

- A. Can the BIR examiner expand his scope of assessment to the effect that it can disallow excess input VAT carried over to succeeding period? –
- B. Is the Summary List of Purchases (SLP) a sufficient proof to substantiate/establish existence of purchase of goods or services?

Ruling:

- A. No. The disallowance of excess input tax carried forward to succeeding period is improper because it is beyond the scope of the assessment of the BIR. Any tax benefit to be derived by the taxpayer from the carry-over will redound to the succeeding quarter. Since the tax benefit will be in the succeeding quarter, at most, the taxpayer may only be assessed in the said succeeding quarter. The same can only be the subject of assessment on the taxable year when they are claimed.
- B. No. an SLP alone is not sufficient proof to establish the existence of purchase of goods or services. Claim for Input VAT should be supported by VAT Invoice or VAT official receipt (OR). Since the Company did not present the VAT invoices and/or ORs, the input VAT claimed is disallowed.

Classic Fine Foods Philippines, Inc. vs. Commissioner of Internal Revenue

CTA Case No. 9391 promulgated on 17 December 2020

Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that it is entitled to the deduction claimed.

Facts:

On 29 December 2009, Company A received a copy the Preliminary Assessment Notice (PAN), containing an assessment for alleged deficiency taxes for taxable year 2006. Company A filed a protest to the PAN and paid the assessed withholding tax on compensation (WTC) and expanded withholding tax (EWT), as well as the substantial portion of the assessed deficiency value-added tax (VAT). The tax audit case ensued, and the BIR later on issued the assailed Final Decision on Disputed Assessment (FDDA), with the Amended Assessment and Details of Discrepancies, wherein the assessed VAT, WTC, EWT and FBT were consequently cancelled.

The BIR however sustained the deficiency income tax arising from disallowed quality/price adjustment, unsupported allowance for inventory obsolescence, unsupported creditable income tax withheld, amount carried forward to succeeding year and excess MCIT, including interest.

Issue:

Is Company A liable for the abovementioned items of assessment?

Ruling:

1. Disallowed quality/price adjustment

Yes. In claiming deduction from gross income, Company A has the burden of proving that the amount representing quality/price, consisting of sales returns, discounts, allowance which are allowed as deductions under the Tax Code, as amended, complied with the substantiation requirements as set forth under Section 34(A)(1)(b) of the Tax Code, as amended.

Here, the BIR disallowed the claim for deduction on the gross income since the petitioner failed to present corroborative evidence and documents relative to the claimed adjustments, other than the testimony of its finance manager.

2. Unsupported allowance for inventory obsolescence

No. It is erroneous to disallow the allowance for inventory obsolescence sold in 2006 pursuant to Section 34(A)(1)(b) of the Tax Code, as amended, because the same was not claimed as deduction to gross income in the Annual ITR in the first place. Thus, the substantiation requirement is not applicable.

3. Unsupported creditable income tax withheld

Yes. Under Section 2.58.3 of Revenue Regulations 2-98, as amended, claimed tax credit per income tax return must be supported by proof. Here, Company A only submitted photocopies of the CWT certificates, without proving that the originals of the same were duly executed.

4. Amount Carried Forward to Succeeding Year

No. The disallowance of petitioner's excess credits carried forward to the succeeding year was improper because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year or years. Since the tax benefit will be in the succeeding year or years, petitioner may only be assessed for the said succeeding year or years.

5. Excess MCIT

No. Under Section 27 (E)(1) and (2) of the Tax Code, as amended, and further implemented by Section 2.27(E) of RR No. 09-98, the 2% MCIT on gross income shall be imposed whenever the taxpayer corporation has zero or negative taxable income or whenever the amount of MCIT is greater than the normal or regular income tax due from such corporation, as determined at the end of the taxable year.

For taxable year 2006, petitioner declared zero taxable income. Consequently, it has paid MCIT on the gross income. Since the excess MCIT will be credited against the normal income tax for the three (3) immediately succeeding taxable years, its benefit will redound to the succeeding year or years. Thus, it is inappropriate to disallow the same in taxable year 2006.

Refund/Issuance of Tax Credit

SMCC Philippines, Inc. (formerly Sumicon Phil. Corp.) vs. Commissioner of Internal Revenue

CTA Case No. 9082 promulgated 12 January 2021

The 120+30-day periods to appeal the decision or inaction of the Bureau of Internal Revenue (BIR) in a VAT refund application filed before the effectivity of the Tax Reform for Acceleration and Inclusion (TRAIN) Act are both mandatory and jurisdictional. Failure to comply with such periods is a ground for the denial of the VAT refund application.

Facts:

On 22 March 2013, Company A filed its administrative claim for refund and/or issuance of tax credit certificate (TCC) for its unutilized input VAT for the first two (2) quarters of calendar year (CY) 2012.

On 11 July 2013, Company A received a Letter of Authority (LOA) authorizing the BIR to examine the Company's books of accounts and other accounting records for VAT for January to June 2012 pursuant to "Mandatory Audit - Claim for VAT Credit Certificate."

On 27 March 2014, and 1 August 2014, Company A submitted additional documents in support of its claim.

On 5 June 2015, Company A received a letter from the Commissioner of Internal Revenue (CIR) dated 29 May 2015, denying its administrative claim.

On 6 July 2015, Company appealed the decision of the CIR to the Court of Tax Appeals (CTA).

Issue:

Was the Company entitled to its refund claim?

Ruling:

No. Company A failed to meet the mandatory periods for the filing of the claim. Reckoned from 1 August 2014, the date of submission of complete documents in support of the application filed, BIR had 120 days or until 29 November 2014 to act on Company A's claim. BIR's inaction as of 29 November 2014 is deemed a denial of Company A's claim from which the latter has 30 days to elevate such claim to the CTA. However, the Petition for Review (appeal) was filed by the Company with the CTA only on 6 July 2015, which is 189 days late. The 120+30-day periods to appeal, as provided under the current rules on VAT refund, are both mandatory and jurisdictional.

Ammex I-Support Corporation vs. Commissioner of Internal Revenue

CTA Case No. 9906 promulgated 8 January 2021

Certain essential elements must be present for a sale or supply of services to be subject to the VAT zero-rate, namely, (a) the services rendered should be other than processing, manufacturing, or repacking of goods; (b) the recipient of the services is a foreign corporation and the said corporation is doing business outside the Philippines or is a nonresident person not engaged in business who is outside the Philippines when the services were performed; (c) the service must be performed in the Philippines by a VAT-registered person; and (d) the payment for such services should be in acceptable foreign currency accounted for in accordance with the BSP rules.

Facts:

Company A on 2 April 2018 filed for a claim for refund or issuance of tax credit certificate for its excess unutilized input VAT attributable to zero-rated sales for the first quarter of taxable year 2016. The Commissioner of Internal Revenue (CIR) denied the application on the sole ground that it was filed beyond the two-year prescriptive period to file the administrative claim.

Issue:

Did Company A file the claim within the period prescribed by law?

Ruling:

Yes, Company A filed the administrative claim within two years after the close of the taxable quarter when the sales were made, and the appeal to the Court of Tax Appeals (CTA) was filed within thirty days from the receipt of the notice of denial of its claim.

Counting two years from 31 March 2016, Company A had until 31 March 2018 to file its administrative claim. However, since 31 March 2018 fell on a Saturday, Company A had until 2 April 2018 to file its administrative claim.

Company A, however, failed to prove entitlement to the refund, having failed to comply with two essential requisites under Section 108 (B) (2) of the Tax Code for the VAT zero-rating of supply of services, which provides that the services were rendered to a nonresident doing business outside the Philippines and that the services were performed in the Philippines. Company A also failed to secure the Certificates of Incorporation from the countries of residence of the nonresident recipients of the services to prove that the service recipients are indeed doing business outside the Philippines or have continuity of commercial dealings outside the Philippines.

Philex Mining Corporation vs. Commissioner of Internal Revenue

CTA Case No. 10037 promulgated 5 January 2021

Party claiming for Input VAT credit/refund must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Input VAT claimed for credit/refund must not be supported by mere photocopies.

Facts:

Company A filed with the BIR an administrative claim for refund of its excess and unutilized input VAT for the 4 quarters of 2017 amounting to P68 million. The BIR partially granted the refund in the amount of P46 million.

Company A appealed the BIR's decision to the CTA.

Issue:

Is the Company entitled to the VAT refund?

Ruling:

No. In deciding the case, the Court discussed each requirement to successfully obtain a credit/ refund of Input VAT. It went on to say that the party claiming for refund must prove every minute aspect of the case. The applicant must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.

The following grounds were cited by the Court in denying the claim:

- a. Input VAT claimed for credit/refund must be supported by original documents. In this case, not all input VAT being claimed were supported by original commercial invoices and BOC SSDT/SAD. Input VAT claimed supported by mere photocopies were denied admission by the Court.
- b. Disallowance of input VAT for failure to meet the invoicing and substantiation requirements under the Tax Code. Specifically, some documents do not contain the required information (e.g., Name, Address, TIN, computer-generated or with manual alteration, VAT not properly indicated, purchase of service not supported by VAT OR).

Note that in this case the Court did not limit its review on the Input VAT denied by the BIR but expanded its review on the entire amount of Input VAT claimed for credit/refund.

Service Resources, Inc. vs. Commissioner of Internal Revenue

CTA No. 9978 promulgated 04 January 2021

Facts:

Company A is a domestic corporation which was formed to primarily establish and operate a manpower service which will undertake, conduct and supply services for individuals, offices, stores, domestic commercial and industrial concerns of all kinds.

On 12 April 2017, Company A filed its Annual Income Tax Return (ITR) for Taxable Year (TY) 2016, which reflected an overpayment of P47,543,794.00. Company A manifested its option to refund the same by checking the appropriate box in the Annual ITR for TY2016.

On 3 August 2017, Company A filed with Revenue District Office (RDO) No. 43 its claim for refund or issuance of tax credit certificate (TCC) of the unutilized CWTs for TY 2016 in the same amount of P16,683,795.71.

With no decision from the BIR on its claim for refund, Company A filed the instant Petition for Review with the CTA on November 22, 2018.

Issue:

Is Company A entitled to a refund or issuance of a TCC?

Ruling:

Yes. In *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation (G.R. No. 188016 dated 14 January 2015)*, the Supreme Court laid down the following requirements for entitlement of a corporate taxpayer to a refund or issuance of TCC involving excess withholding taxes:

1. The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the Tax Code, as amended;
2. It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and

The CTA emphasized laid down the following requirements for entitlement of a corporate taxpayer to a refund or issuance of TCC involving excess withholding taxes: (1) The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the Tax Code; (2) It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (3) The fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount.

3. The fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount.

The present claim for refund pertains to TY2016 for which Company A filed its Annual ITR on 12 April 2017. Counting two (2) years from this date, Company A had until 12 April 2019 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Company A filed its administrative claim on 3 August 2017 and its judicial claim on 22 November 2018.

As the records show, the BIR failed to decide on Company A's claim for almost 16 months from the time the latter filed an administrative claim (on 3 August 2017) until it filed its judicial claim (on 22 November 2018). The BIR had more than sufficient time to examine Company A's claim for refund, yet it did not take action.

In *CBK Power Company Limited vs. Commissioner of Internal Revenue (G.R. No. 193383-843 dated 14 January 2015)*, the Supreme Court ruled that Section 229 of the Tax Code, as amended, only requires that an administrative claim be priorly filed.

Local Business Tax

The Municipal Treasurer of the Municipality of Claver vs. Platinum Group Metals Corporation

CTA *En Banc* No. 2157 (CTA AC No. 182) promulgated 7 January 2021

Facts:

On 18 April 2016, the Municipal Treasurer of the Municipality of Claver issued a Notice of Assessment requiring Company P to settle the assessed local business taxes for calendar years 2015 and 2016 in the amount of PhP83,981,477.43 and PhP61,833,811.88, respectively.

On 22 June 2016, Company P sent a letter protesting the assessed local business taxes on the ground that its supposed Income Tax Holiday (ITH) was extended to cover certain "bonus years" including calendar years 2015 and 2016. Subsequently, Company P questioned the basis used in the Notice of Assessment.

Municipality of Claver argued that the basis used in the computation of the assessment which is the "gross value of shipment" falls within the definition of "gross receipts" under the Local Government Code (LGC).

Issue:

Was the Notice of Assessment null and void because the same is not based on Company P's gross receipts?

Ruling:

Yes. Generally, Section 3 of DOF Local Finance Circular No. 02-09 provides that the tax on mining companies shall be levied on their gross receipts for the preceding calendar year. The same DOF Circular defined Gross Receipts as

In order for the tax base used in assessing Local Business Tax to be in accordance with the Local Government Code, the same should be based on gross receipts or the amount of consideration actually or constructively received. The consideration should be under the control of respondent without imposed restrictions as to its use. A Notice of Assessment issued upon a tax base not in accordance with the mandates of law shall render it void.

the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services, and deposits or advance payments actually or constructively received for the services performed or to be performed for another person.

In the instant case, the Notice of Assessment is based on the “total gross value of shipment” as prepared by the Mines and Geosciences Bureau (MGB). Clearly, this is based on the value of total ore transported by Company P regardless of whether the same has been paid by its customers or not. Therefore, this is not equivalent to Gross Receipts as contemplated under the LGC and Municipal Ordinance of Claver.

Considering that the tax base used by the Municipality of Claver is not in accordance with the mandates of the law, it follows that the Notice of Assessment issued against Company P for 2015 and 2016 is void.

Prescription

People of the Philippines vs. Ulysses Falconet Consebido

CTA *En Banc* Criminal Case No. 069 (CTA Criminal Case No. O-701)
promulgated 6 January 2021

Facts:

On 18 March 2019, an Information was filed against Mr. U, an individual and Filipino citizen residing in the Philippines, for willful failure to file quarterly Value-Added Tax (VAT) return for the third quarter of taxable year 2008, which resulted in basic deficiency quarterly VAT of PhP4,184,566.10, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

On 2 April 2019, the Court of Tax Appeals (CTA) Division dismissed the case on the ground of prescription as the case against Mr. U was filed in Court beyond the five (5) year prescriptive period mandated under Section 281 of the Tax Code, as amended, applying the Supreme Court case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines (“Lim v. CA”)* G.R. Nos. L-48134-37 dated 18 October 1990.

Issue:

Was the dismissal of the criminal case against Mr. U valid?

Ruling:

Yes.

Section 281 of the Tax Code, as amended, provides that all violations of any provisions of the Tax Code shall prescribe after five (5) years. The date of prescription shall start from the day of the commission of the violation of the law, and if the same be not known at the time, from discovery thereof and the institution of judicial proceedings for its investigation and punishment.

Both the date of discovery and the institution of judicial proceedings for investigation and punishment are significant events in the prosecution of any infraction of the Tax Code. It was observed that as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment up to the filing of the Information in court does not exceed 5 years, then the government’s right to file a criminal action is not yet prescribed.

The commencement of the prescriptive period as provided in the above-cited provision (previously Section 354 of the NIRC of 1939) was interpreted by no less than the Supreme Court in *Lim v. CA*, providing that “Section 354 speaks not only of the discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word ‘and’ between the phrases ‘the discovery thereof’ and ‘the institution of judicial proceedings for its investigation and punishment’”. In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the 5-year limiting period begins to run.

In the instant case, the Joint Complaint-Affidavit of the investigating revenue officers was filed with the DOJ for preliminary investigation on 30 January 2014. Thus, the point in time which constitutes “discovery” together with the institution of judicial proceedings for preliminary investigation, show that prescription began to run on 30 January 2014. Therefore, the 5-year prescriptive period lapsed on 30 January 2019. In fine, when the Information was filed before the Court in Division on 18 March 2019, the 5-year prescriptive period had already lapsed.

Thus, applying the provisions of Section 281 of the Tax Code, as amended, and *Lim v. CA*, the CTA Division correctly denied the case filed against Mr. U as it can no longer be entertained due to prescription.

Supreme Court Cases

Commissioner of Internal Revenue vs. Federation of Golf Clubs of the Philippines, Inc.

Supreme Court (First Division) G.R. No. 226449, promulgated 28 July 2020

Facts:

Federation of Golf Clubs of the Philippines, Inc. (FEDGOLF) questioned the validity of Revenue Memorandum Circular (RMC) No. 35-2012 issued by the Commissioner of Internal Revenue (CIR) before the Regional Trial Court (RTC).

RMC No. 35-2012 clarifies the taxability of clubs that are organized and operated exclusively for pleasure, recreation, and other non-profit purposes (recreational clubs), and provides that the income of such clubs from whatever source, including *membership fees, assessment dues*, rental income, and service fees are subject to income tax, and that the recreational club’s gross receipts including *membership fees, assessment dues*, rental income and service fees are subject to value-added tax (VAT).

The CIR argues that a recreational club’s income from whatever source is subject to income tax. Moreover, the CIR maintained that the Tax Code provides that non-stock, non-profit organizations are subject to VAT on their sale of goods and services.

The RTC declared RMC No. 35-2012 invalid and the CIR appealed to the Supreme Court.

Membership fees or association dues collected by recreational clubs are not subject to income tax since these are considered as capital and not income. Neither are these considered as gross revenues for VAT purposes since recreational clubs are not selling services to its members.

Issue:

Is the issuance of RMC No. 35-2012 valid?

Ruling:

No, RMC No. 35-2012 is invalid. The interpretation under RMC No. 35-2012 is erroneous as it effectively eradicated the distinction between “income” and “capital” when it classified membership dues, assessment fees, and the like as “income” which are subject to income tax.

Income is the “amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment” while capital is the “fund” or “wealth.”

Membership fees and the like are considered as “capital” as they are intended for the upkeep of the facilities and operations of recreational clubs, and not to generate revenue. Only the recreational club’s income is subject to income tax.

RMC No. 35-2012 also erroneously included the membership dues and the like as part of gross receipts of recreational clubs which are subject to VAT. In collecting such fees from members, recreational clubs are not selling any kind of service, in the same way that members are not procuring services from them. Thus, there could be no “sale, barter, or exchange of goods or services” that is subject to VAT.

SGV | Building a better working world

SGV is the largest professional services firm in the Philippines. In everything we do, we nurture leaders and enable businesses for a better Philippines. This Purpose is our aspirational reason for being that ignites positive change and inclusive growth.

Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. Working across assurance, tax, strategy and transactions, and consulting services, SGV teams ask better questions to find new answers for the complex issues facing our world today.

SGV & Co. is a member firm of Ernst & Young Global Limited. EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets. Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com/ph.

© 2021 SyCip Gorres Velayo & Co.
All Rights Reserved.
APAC No. 10000707
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Clark, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

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.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor. While these information have been carefully prepared for reference, they are of a general nature and should not be applied without the guidance/advice of experts trained specifically to interpret and apply them.

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.