Tax Bulletin

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and enable businesses for a better Philippines.

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SGV 75 YEARS ABOVE & BEYOND

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32 To sustain a conviction for willfully failing to pay the correct tax under Section 255 of the NIRC, the following elements must be established beyond reasonable doubt:

1. The taxpayer is required under the NIRC or its rules and regulations to pay any tax;
2. The taxpayer failed to pay the required tax at the time required by law or rules and regulations; and
3. The taxpayer willfully failed to pay the tax.

The second and third elements are dependent on the first element. Thus, it is only when the first element is established that the remaining elements must be determined to exist as there can be no willful failure to pay a tax if there is no requirement to pay the same at all. In the absence of a valid assessment for deficiency tax, the first element of the crime charged is not present.

Tax Assessment

34 Nowhere in the regulations or in existing jurisprudence is there any mention of a requirement that the LOA must bear a dry seal to be valid.

BIR Administrative Requirements

RMC No. 54-2021 was issued to address frequently asked questions regarding the submission of BIR Form No. 1709 (RPT Form), and the preparation of TPD following the amendment of RR No. 19-2020 by RR No. 34-2020.

RMC No. 54-2021 issued on 27 April 2021

- The following are required to accomplish and file an RPT Form:

  1. it is required to file an Annual Income Tax Return (AITR);

  2. it has transactions with a domestic or foreign related party during the concerned taxable period; and

  3. it falls under any of the following categories:

     - Large taxpayers*

     - Taxpayers enjoying tax incentives, i.e. Board of Investments (BOI)-registered and economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential income tax rate**

     - Taxpayers reporting net losses*** for the current taxable year and the immediately preceding 2 consecutive taxable years

     - A related party that has transactions with (a), (b) or (c).

       * A large taxpayer is a taxpayer who has been classified and duly notified by the Commissioner of Internal Revenue (CIR) for having satisfied any or a combination of set criteria as prescribed in RR No. 1-1998 or any amendatory regulations. Notification may be made via registered mail, publication, or any other mode of service.

         Therefore, a taxpayer who meets any of the set criteria but was not notified by the CIR cannot be considered a large taxpayer.

       ** In determining whether a taxpayer is subject to preferential income tax rate, reference must be made to the provisions of the Tax Code or other special laws on how these taxpayers are taxed as a whole and not on a per transaction basis.

         Hence, a corporate taxpayer that is subject to regular corporate income tax but has transactions that are subject to preferential income tax rate under tax treaties or the Tax Code are not required to file an RPT Form, provided further that they do not fall under Section 2(a), (c) and (d).

       *** The net operating losses for income tax purposes should be the basis and not the amount reflected in the Audited Financial Statements (AFS).

- Taxpayers who are exempt from income tax under Section 30 or similar provisions of the Tax Code or special laws are not required to file an RPT Form.

  Also included in the classification of tax-exempt taxpayers are the regional or area headquarters and representative offices of foreign corporations that are not allowed by law to derive income from the Philippines.

  Post-employment benefit plans are also not required to file an RPT Form if their related party transactions consist only of the contributions from their sponsor employers.

- The materiality threshold is only relevant in determining who are required to prepare a TPD. A taxpayer who is required to file an RPT Form must disclose all related party transactions irrespective of the amount.

- In filling out the RPT Form, if possible, similar transactions with the same related party must be aggregated.

- The TPD and other supporting documents shall no longer be attached to the RPT Form but shall instead be made available during the audit.

- No less than the actual amounts of the related party transactions shall be declared in the RPT Form. Just like any other tax returns, the RPT Form likewise contains a perjury clause whereby the taxpayer or its duly authorized representative attests to the truthfulness of the facts stated therein.

- The filing of RPT Forms shall only be mandatory for short period returns that are originally required by law or existing revenue issuances to be filed in 2021 and subsequent years.

- The enumeration under Section 2 of RR No. 34-2020 is exclusive such that all taxpayers not included therein are not required to file the RPT Form. A taxpayer who is required under Section 2 to file the RPT Form shall only prepare its TPD if it satisfies any of the conditions set out under Section 3. If the taxpayer is not required to file the RPT Form, then it is not also mandated to prepare a TPD.

  Nothing prevents any taxpayer, however, from preparing a TPD and presenting the same during audit to prove that its related party transactions were conducted at arm's length. Though not required to prepare a TPD under RR No. 34-2020, it still needs to reasonably assess and prove whether its dealings with related parties adhere to the arm's length principle. After all, the burden of proof rests upon the taxpayer.

- The preparation of a TPD shall be mandatory if the taxpayer meets any of the following conditions:

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

  2. Sale of tangible goods involving the same related party exceeding Sixty Million Pesos (P60,000,000) within the taxable year.

  3. Service transaction, payment of interest, utilization of intangible goods or other related party transaction** involving the same related party exceeding Fifteen Million Pesos (P15,000,000) within the taxable year.

4. If TPD was required to be prepared during the immediately preceding taxable period for exceeding (a) to (c).

    * The amount of gross sales/receipts/revenues/fees reported in the AITR, irrespective of the source and identity of the other party to the transaction (i.e., related or otherwise).

    ** All other related party transactions not specifically enumerated in Section 3(b) of RR No. 34-2020.

- In computing the total amount of related party transactions with foreign and domestic related parties, the following items shall be totaled:

    1. Amounts received and/or receivable (trade receivables) from related parties during the taxable year.

    2. Amounts paid and/or payable (trade payables) to related parties during the taxable year less any.

    3. Outstanding balances of loans and non-trade amounts due from/to all related parties (non-trade receivables and payables).

    Any compensation paid to key management personnel, dividends and branch profit remittances shall not be included in the computation.

- Share in the net income of an associate, etc. is akin to dividends. Therefore, it is not required to be reported in the RPT Form.

- The Bureau requires the submission of a duly accomplished RPT Form. If the taxpayer fails to provide any material information (e.g., details of the related parties and related party transactions) the Bureau will regard the RPT Form as not duly filed and the penalty for failure to file such information return will be imposed.

- The RPT Form requires the amounts in foreign currency and its equivalent in the local currency. However, if several currencies were used for the related party transactions, and it seems impractical to indicate all of them in the RPT Form, their equivalent in the local currency should instead be disclosed.

    In all cases, the exchange rates to be used should be the rate at the transaction date.

    The same rule applies to the preparation of a TPD.

- Through the RPT Forms submitted, the Bureau will conduct an initial transfer pricing risk assessment, identify the high-risk taxpayers and make an informed decision whether or not to conduct a transfer pricing audit of a particular entity or transaction. As to who will be subjected to a transfer pricing audit will greatly depend on the results of such initial assessment.

    This notwithstanding, the Bureau still retains the right to conduct a transfer pricing audit against taxpayers with related party transactions, irrespective of whether or not they are required to file the RPT Form and prepare a TPD.

    When subjected to an audit, taxpayers who are not mandated to file the RPT Form and to prepare a TPD must still present sufficient evidence to prove that their related party transactions were conducted at arm's length.

- In order for the related party transactions covered by an Advance Pricing Agreement (APA) to be exempt from disclosure in the RPT Form, the APA should be approved and accepted by the BIR. This may be in the form of a unilateral, bilateral or multilateral APA.

  The BIR is not obliged to accept any unilateral APAs entered into by a foreign taxpayer and the tax authority of the country of residence although it applies to an international transaction between such foreign taxpayer and its related party in the Philippines.

- Taxpayers who are not required to file an RPT Form and have already finalized their AFS for taxable year 2020 prior to the effectivity of RR No. 34-2020 are not expected to comply with the mandate of Section 4 thereof and cannot, therefore, be penalized for non-disclosure.

  Section 4 only applies to the AFS that are required to be submitted after the effectivity of RR No. 34-2020.

- RR No. 34-2020 took effect immediately after its publication in a newspaper of general circulation on 23 December 2020. The provisions thereof shall only apply to the RPT Forms that are required to be submitted after its effectivity.

Other BIR Issuances

RMC No. 55-2021 circularizes the Updated List of BIR Forms and Its Availability.

RMC No. 55-2021 dated 5 April 2021

- The Circular is issued to inform and disseminate to the taxpayers about the Updated List of BIR Forms (refer to Annex "A" of the issuance) which are available for use/downloading in the following:

  1. Electronic Filing and Payment System (eFPS); or

  2. Office Electronic Bureau of Internal Revenue Forms (eBIRForms) Package 7.8; or

  3. BIR website (www.bir.gov.ph) under the Forms Section

RMC No. 58-2021 circularizes a copy of Republic Act No. 11521, entitled "An Act Further Strengthening the Anti-Money Laundering Law, Amending for the Purpose Republic Act No. 9160, Otherwise Known as the 'Anti-Money Laundering Act of 2001', as Amended."

RMC No. 58-2021 dated 3 May 2021

- Section 20 [Non-intervention in the Bureau of Internal Revenue (BIR) Operations] of RA No. 9160, amended by RA No. 11521, provides that nothing contained in the RA nor in related antecedent laws or existing agreements shall be construed to allow the Anti-Money Laundering Council (AMLC) to participate in any manner in the operations of the BIR. The AMLC may, however, coordinate with the BIR on investigations in relation to violations of Section 254 of the National Internal Revenue Code (NIRC), as amended, as a predicate offense to money laundering.

RMC No. 61-2021 publishes the full text of the Memorandum of Agreement between the Bureau of Internal Revenue and the Department of Trade and Industry.

RMC No. 61-2021 dated 5 May 2021

- The Memorandum of Agreement was executed in connection with the institution of an Information Management Program required under Republic Act No. 9480, subject to the following terms and conditions, among others:

    1. DTI consents to share with BIR, by means of online access, those personal data or information which it collected in the performance of mandated duties and functions, pursuant to Section 5 of the NIRC of 1997, as amended by the TRAIN law, to be utilized by BIR, exclusively for purposes of assessment, collection, and enforcement of national internal revenue taxes and strictly in compliance with the Data Privacy Act, its IRR and related laws/rules/regulations.

    2. BIR consents to share with DTI, by means of online access, personal data or information of the taxpayers not otherwise covered by Section 270 of the NIRC of 1997, as amended, and those that are declared or obtainable from the Tax Amnesty Returns and the SALNs required to be filed under Republic Act No. 9480, which it collected in the performance of its mandated duties and functions, subject to compliance with Section 4 of NPC Circular No. 16-02, to be utilized by DTI for validation purposes only.

RMC No. 62-2021 clarifies certain provisions of RR No. 5-2021, the RR implementing the income tax provisions of R.A. No. 11534 or the CREATE Act.

RMC No. 62-2021 30 dated April 2021

- One of the conditions that must be satisfied to qualify for the reduced corporate income tax rate of 20% is that the total assets should not be more than P100,000,000, exclusive of the land. Total assets shall be net of depreciation and allowance for bad debts, if any. Moreover, the land where the business entity's office, plant and equipment are situated is excluded in computing for the total assets. If the cost of acquisition of the land is reflected in the Financial Statements (FS), that cost shall be excluded in determining the total assets. But if the land is reflected in the FS at its fair market value (FMV), such FMV shall be excluded in the computation of the total assets.

- The value of the land which shall be excluded in determining the total assets of the corporation for purposes of qualification to the reduced corporate income tax rate of 20% is limited to that particular land where the business entity's office, plant and equipment are situated during the taxable year for which the 20% income tax is imposed. Thus, if the land is being held primarily for sale to customers or land held for investment purposes, the value of these types of land should not be excluded in the determination of the business entity's total assets.

- To determine the value of the land that shall be excluded in computing for the total assets if only a portion of the floor area of the building is devoted to the entity's office and the rest of the usable floor area are on lease, the percentage of the floor area devoted to the entity's office shall be multiplied with the total value of the land.

- The value of the land being used as banana plantation or being leased should NOT be excluded in the determination of the total assets for purposes of qualification for the 20% corporate income tax rate.

- Private educational institutions distributing dividends to shareholders are taxable at the regular corporate income tax rates of either 25% or 20% because the law is very specific that the preferential rate of 10% or 1% starting from 1 July 2020 to 30 June 2023 shall be imposed to Proprietary Educational Institution, which is defined as "any private schools which are non-profit, maintained and administered by private individuals or groups, with an issued permit to operate from Department of Education (DepEd) or Commission on Higher Education (CHED) or Technical Education and Skills Development Authority (TESDA), as the case may be, under existing regulations".

- The CREATE law did not prescribe new tax treatment for proprietary educational institutions and private hospitals since it is already provided in the Tax Code of 1997, as amended. The CREATE Act merely reduced the tax rate, from 10% to 1%, effective 1 July 1, 2020 to 30 June 2023 for such institutions which are non-profit.

- Section 5 of RR No. 5-2021 states that "if the Certification shall state non-utilization of the dividends received the corresponding tax due on the unutilized dividends shall be declared as taxable income, subject to interest, surcharges and penalties, if any." The taxable income shall be the unutilized dividends. The provision on RR No. 5-2021 regarding unutilized dividends should be read as "if the Certification shall state non-utilization of the dividends received, the unutilized dividends shall be declared as taxable income, and the corresponding tax due shall be subject to interest, surcharges and penalties."

- The tax treatment of dividends received by a domestic corporation from a resident foreign corporation (RFC) will depend on the sources of income of the RFC. Under Section 42(A)(2)(b) of the Tax Code, as amended, "dividend received from a foreign corporation shall be treated as income derived from sources within the Philippines, unless less than fifty percent (50%) of the gross income of the foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of the period as the corporation has been in existence) was derived from sources within the Philippines xxx xxx."

- In relation to illustration "a" under Section 9.B on the Transitory Provisions of RR No. 5-2021 where it states that the transactions of MVAA Corporation pertain to its fourth year of business operation, hence, MCIT was computed, the phrase "4th year of business operations" in the illustration should be construed to mean "fourth taxable year immediately following the year in which such corporation commenced its business operation" as indicated under Section 3 of RR No. 5-2021 on MCIT. Thus, if the corporation commenced its business operations in 2017, MCIT may be imposed beginning the year 2021, if it exceeds the regular income tax. The taxable year in which business operations commenced shall be the year in which the corporation is registered with the BIR, as provided under RR No. 9-98.

- The law provides no distinction as to which type of industry can claim the additional allowable deduction of one-half (1/2) of the value of labor training expenses. There are, however, requirements that must be complied with before this deduction can be claimed. These are:

    1. The labor training expenses shall not be more than 10% of the Direct Labor Wage;

    2. The labor training expenses are incurred for skills development of enterprise-based trainees;

3. The enterprise-based trainees are enrolled in public senior high school, public higher education institutions, or public technical and vocational institutions for the taxable year in which the labor training expenses are claimed;

4. The training is covered by an apprenticeship agreement under Presidential Decree (PD) No. 442 or the Labor Code of the Philippines; and

5. The Company claiming the additional deduction is granted an authority to offer training program for skills development as certified by the DepED, TESDA or CHED, as applicable.

- Moreover, since the training is covered by an apprenticeship agreement, it follows that training expenses which pertain to training/s of employees under supervisory, managerial, administrative and support functions should not be included in the computation of the additional allowable deduction of 1/2 of the value of labor training expenses. The resulting amount then shall be subject to a cap of not more than 10% of the Direct Labor Wage. The "direct labor" is that portion of salaries and wages which can be identified with and charged directly to a product or to a project or service on a consistent basis. Thus, it does not only apply to a manufacturing industry.

Bureau of Customs

Export of Scrap Metal to China for Commercial Use and Export of Mill Scale into South Korea do not require issuance of Export Clearance

AOCG Memo No. 184-2021 dated April 8, 2021 and AOCG Memo No. 185-2021 dated March 8, 2021

AOCG Memo No. 184-2021 clarifies that exports of scrap metal to China intended for commercial use are not covered by the permitting requirements of the Toxic Substances and Hazardous and Nuclear Wastes Control Act (RA No. 6969); hence, the issuance of a corresponding Export Clearance is not required.

AOCG Memo No. 185-2021 clarifies that exports of mill scale or iron slag, not being classified as hazardous wastes, to South Korea are not regulated by the Department of Environment and Natural Resources (DENR); hence similarly, the issuance of a corresponding Export Clearance is not required.

Strict Implementation of Republic Act No. 4653, "An Act to Safeguard the Health of the People and Maintain the Dignity of the Nation by Declaring it a National Policy to Prohibit the Commercial Importation of Textile Articles Commonly known as Used Clothing and Rags"

OCOM Memo No. 75-2021 dated 3 May 2021

OCOM Memo No. 75-2021 announces the BOC's compliance with the established rule from jurisprudence, excluding Freeport Zones from the prohibition provided under RA No. 4653, unless the goods are brought into the domestic market.

- RA No. 4653 prohibits the commercial importation of textile articles commonly known as used clothing and rags.

- The Supreme Court decided in Bureau of Customs (BOC) vs. Interlink Recyclers Philippines, Inc. that the importation of used clothing and rags into the Freeport Zone, being treated as a separate customs territory, are not covered by the prohibition under the law, unless they are brought into domestic commerce.

Implementation of the Informal Entry System for Low Dutiable Express Shipments

OCOM Memo No. 66-2021 dated 13 April 2021

OCOM Memo No. 66-2021 announces the implementation of the 'e2m Informal Entry System for Express Shipments.

- This applies to low value dutiable shipments or goods of commercial nature, specifically, those with an FOB or FCA value of more than P10,000 but less than P50,000. The implementation commenced on 19 April 2021.

CMC No. 86-2021 clarifies that only importers of passengers car/vehicles from a country that is exempt from the safeguard duty and not covered by preferential tariffs shall be required to submit a Certificate of Origin (CO) issued by the authorized agency/office in the source country of manufacture, affixing an Apostille or an authentication by the Philippine Embassy or Consulate General, whichever is applicable.

Clarification on the Requirement to Submit an Authenticated Certificate of Origin for Importers of Motor Vehicles from Countries Exempted from Imposition of the Provisional Safeguard Duty under DAO 20-11

CMC No. 86-2021 dated 15 April 2021

- An authenticated CO issued to claim preferential tariffs are considered as sufficient proof of origin for exemption from the provisional safeguard duty.

CMC No. 78-2021 announces the implementation by the EMB of the GHS of Classification and Labelling of Chemicals which covers all chemical substances and mixtures manufactured, imported, distributed, stored, and transported in the Philippines.

Implementation of the Globally Harmonized System pursuant to DENR Administrative Order No. 2015-09

CMC No. 78-2021 dated 12 April 2021

- The EMB has implemented the GHS on chemicals under the Priority Chemical List (PCL), Chemical Control Order (CCO), High Volume Chemicals (HVCs), and chemical substances listed by the International Air Transport Association (IATA) and International Maritime Dangerous Goods (IMDG) Code.
- Customs officials are directed to require all importers of chemicals covered by DAO 2015-09 to strictly prepare the appropriate Summary Data Sheet (SDS) covering their imports and comply with the labelling requirements. Non-compliance by any Customs Official shall be subject to penalties under the Customs Modernization and Tariff Act (CMTA).

AOCG Memo No. 205-2021 provides for a 4-month validity extension period from the original date of expiration of a LTO, CPR, and CPN, if an application for renewal of the same was successfully submitted to the FDA.

Validity Extension of Existing License to Operate and Certificate of Products Registration/Notifications Issued by the Food and Drug Administration

AOCG Memo No. 205-2021 dated 14 April 2021

- In consideration of the COVID-19 pandemic, the period of validity of existing FDA authorizations (LTOs, CPRs, and CPNs) were granted an extension of 4 months from the original date of expiration.
- The extension is only available if an application for renewal for said authorizations have been submitted to the FDA.
- Regulated entities are advised to attach copies of FDA Circular Nos. 2020-024 and 2020-024-A ("Updated Guidelines for Application of Authorizations at the Food and Drug Administration in Light of The Community Quarantine Declarations", and an amendment thereto), with supporting documents, when transacting with the BOC.

CMO No. 205-2021 introduces the BOC Privacy Manual, documenting the agency's responsibilities under the Data Privacy Act of 2012 and outlining its data protection and security measures for the information it collects.

BOC Privacy Manual

CMO No. 205-2021 dated 7 May 2021

- With its Privacy Manual, the BOC aims to protect the fundamental human rights to privacy and of communication and ensure that personal information in information and communications systems in the government and in the private sector are secured.

- The policies set forth in the manual apply to information collected by the BOC, which shall only be through a transparent manner and only with the full cooperation and knowledge of interested parties. This includes any offline or online information that makes a person identifiable, such as, but not limited to names, addresses, usernames and passwords, digital footprints, photographs, government-issued identification numbers, and financial data.

- All processing of personal data within the BOC shall be conducted in compliance with the Principles of Transparency, Legitimate Purpose and Proportionality as espoused in the Data Privacy Act. The individuals, from whom data are being collected, must be made aware of the nature, purpose, and extent of the processing, the risks and safeguards involved, the identity of persons and entities involved in processing their personal data, their corresponding rights thereon and how they can be exercised. The processing shall conform to a declared and specified purpose not contrary to law, morals, or public policy, and shall be adequate, relevant, suitable, necessary, and not excessive in relation to the purpose declared and specified.

- Consistent with the provisions of the Data Privacy Act, the manual reiterates the rights of the individual whose data is being processed, or the *data subject*, namely: the right to be informed and be furnished, the right to object, the right to access, the right to rectification, the right to erasure or blocking, the right to data portability, and the right to damages.

- *Personal information*, which includes any information from which the identity of an individual is apparent or if by itself or when put together with other information can be reasonably and directly ascertained by the entity holding the information, may be processed by the BOC subject to certain conditions, provided it is not otherwise prohibited by law.

- *Sensitive personal information* refers to personal information about a person's race, ethnic origin, marital status, age, color, religious, philosophical, or political affiliations, health, education, genetic or sexual life, and the fact of, details, disposal, or sentence of any proceeding in any court for any offense he or she has committed or is alleged to have committed. It also includes personal information issued by government agencies peculiar to an individual like social security numbers, previous or current health records, licenses or its denials, suspension, or revocation, and tax returns, as well as those specifically established by law to be kept classified.

- Sensitive personal information and any privileged communication, as constituted under the Rules of Court and other pertinent laws as such, may only be processed by the BOC in cases specified in the regulations.

- The regulation has also provided for the instances when personal data may be retained. It also provided for the manner of retention and disposal of personal data.

- An individual whose data is to be processed must consent to the processing of his or her personal data before it may be processed by the BOC. Such consent must be given by a clear, affirmative act establishing a freely given, specific, informed, and unambiguous indication of will and must be evidenced by written, electronic, or recorded means. When the processing of personal information is based on consent, the consent must be given in relation to the declared purposed for processing.

- No employee of the BOC may access sensitive personal information without first obtaining a security clearance from the head of the source office, except for instances that may be allowed through guidelines issued by the National Privacy Commission. Sensitive personal information maintained by the BOC may not be transported or accessed from a location off its property without the approval of the head of the agency.

- Inquiries and complaints involving data privacy may be directed to the BOC through its Public Information and Assistance Division, personally or by email at piad@customs.gov.ph.

PEZA

MC No. 2021-030 provides for Advisory on Travel Ban Exemptions, Guidelines and Procedures.

PEZA MC No. 2021-030 dated 3 May 2021

- Pursuant to the IATF Resolution No. 113 Series of 2021 dated April 29, 2021 and the recent Advisories issued by the Bureau of Immigration (BI) and the Department of Foreign Affairs – Office of the Consular Affairs (DFA-OCA), the following rules shall be implemented on the travel of Foreign Nationals (FNs) into the country and the procedures implemented in processing of travel ban exemptions by the DFA-OCA:

    1. Beginning May 1, 2021, the FNs allowed under previous IATF resolutions shall be allowed to enter the Philippines subject to the following conditions:

        - With valid and existing visa at the time of entry, except for those qualified under the Balikbayan program under RA No. 6768 or the Act Instituting the Balikbayan Program;

        - With pre-booked accommodation for at least 7 nights in an accredited quarantine hotel/facility;

        - COVID-19 testing at the quarantine hotel/facility on the 6th day from date of arrival; and

        - Subject to the maximum capacity of inbound passengers at the port and date of entry.

    2. Effective 3 May 2021, the DFA-OCA will implement the new guidelines for streamline processing of requests for exemption from the temporary suspension of visa issuance endorsed and submitted on-line by the National Government Agency (NGA)/PEZA, following strict compliance to the submission of complete requirements in the required Form.

- In line with this, the applicant-company must submit to PEZA the following documents in a single PDF file, using a file minimizer to compress file size and minimize storage consumption:

    1. Request letter from the company/individual specifying the purpose of entry;
    2. Copy of the passport date page of the foreign national/s requesting entry;
    3. Copy of the foreign national's valid visa (if applicable);
    4. Copy of corporate papers of the company (if applicable); and
    5. Updated excel form.

- Due to limited manpower and alternative work arrangement due to the pandemic, the DFA advised on-line access to DFA-OCA on this transaction will only be from Monday to Friday, 9:00 a.m. to 3:00 p.m., which may even be terminated earlier than the cut-off time of 3:00 p.m. once DFA-OCA receives its daily limit of endorsed requests of 100. DFA-OCA likewise enjoins FNs to finalize their travel itineraries only after receipt of their entry exemption documents and visas.

- Letters to the Bureau of Immigration (LBI) without expiration issued by the DFA prior to 8 February 2021 will no longer be accepted for entry starting 1 June 2021. FNs who are still holding said LBIs that remain unused must enter the country before 1 June 2021 to be able to use the said entry exemption document for visa application and entry to PH.

- DFA will not extend the validity of LBIs. FNs who fail to use their LBIs within 90-day validity will have to request for a new entry exemption document/LBI.

MC No. 2021-028 provides for Vaccine Procurement through Service Providers.

PEZA MC No. 2021-028 dated 3 May 2021

- PEZA conducted the "Dialogue with PEZA-registered Enterprises on Vaccine Procurement" last 20 April 2021.

- The suggested steps for vaccine procurement are as follows:

    1. *Step 1. Contact Vaccine Service Providers (VSPs).* The PEZA-registered enterprise / company representative shall directly contact the VSPs through email or phone number to submit a non-binding letter of intent or request to purchase vaccines providing the indicative number of doses or number of workers to be administered with COVID-19 vaccines.

    2. *Step 2. Proposal*. The VSP sends an email proposal to the company and relevant documents including the cost of the vaccine and cost of vaccine administration.

    3. *Step 3. Compare*. The company compares information provided by the VSPs (e.g., vaccine manufacturer, cost of vaccine, cost of vaccine administration, storage temperature, expected time of arrival).

    4. *Step 4. Submit documents to chosen VSP*. The company decides which vaccine to purchase and submits signed purchase documents which may include any of the following: term sheet, purchase agreement, non-disclosure agreement, letter of intent, memorandum of agreement, reservation fee. These documents will be submitted by the company to their selected VSP.

- All PEZA-registered companies are urged to coordinate directly with VSPs of their choice to be able to compare vaccine costs, arrangement for vaccine administration and other vaccine-related information.

- All information materials of the online meeting are available through this link: http://bit.ly/PEZAdialogue

MC No. 2021-26 Supplemental Advisory Regarding the Temporary Suspension of Processing of PEZA Endorsement for Travel Ban Exemption Requests.

PEZA Memorandum Circular (MC) No. 2021-26 dated 19 April 2021

- Pursuant to the IATF Resolution No. 110 dated 15 April 2021, amending IATF Resolution No. 103 dated 18 March 2021, the temporary suspension of entry of Foreign Nationals to the Philippines has been extended to 30 April 2021.

- Without prejudice to immigration rules and quarantine protocols and the existence of a valid visa at the time of entry, Foreign Nationals may be allowed entry to the Philippines provided they have:

    1. valid exemption documents duly issued by the DFA prior to 22 March 2021; or

    2. valid exemption documents approved and issued by the NTF Chairperson/ his duly authorized representative due to emergency, humanitarian and analogous cases, in accordance with NTF Memo Circular No. 5 series of 2021.

- The PEZA-Foreign National Unit (PEZA-FNU) will temporarily defer accepting/ processing requests for PEZA Endorsements for Travel Ban Exemptions to the DFA-OCA until 30 April 2021. PEZA locators are instructed to file/refile their requests after 30 April 2021, or until further notice.

Banks and Other Financial Institutions

Amendments to the Guidelines on Recovery Plan of a Domestic Systematically Important Bank (D-SIB)

Circular No. 1113 amends Section 128 of the MORB on D-SIBs.

Circular No. 1113 dated 16 April 2021

Circular No. 1113 amends Section 128 of the MORB on D-SIBs as follows:

D-SIBs

It is the thrust of the BSP to ensure that its capital adequacy framework is consistent with the Basel principles. Hence, the BSP is adopting policy measures for domestic systemically important banks (D-SIBs), which are essentially aligned with the documents issued by Basel Committee on Banking Supervision (BCBS) on global systematically important banks (G-SIBs) and D-SIBs. The broad aim of the policies is to reduce the probability of failure of D-SIBs by increasing their going-concern loss absorbency and to reduce the extent or impact of failure of D-SIBs on the domestic/ real economy.

The framework for dealing with D-SIBs consists of three parts, as follows:

- Assessment methodology
- Higher Loss Absorbency (HLA) and interaction with other elements of Basel III framework
- Intensive supervisory approach

Banks identified as D-SIBs shall prepare concrete and reasonable recovery plans which shall be implemented in case the bank breaches the HLA capital requirement. Accordingly, D-SIBs shall ensure consistency and coherence of the Internal Capital Adequacy Assessment Process (ICAAP) document and recovery plan. The ICAAP outcome and potential measures to address capital needs shall feed in without delay

in the recovery plan, and vice versa, to ensure that the processes and information included in the said documents are consistent and up to date. The recovery plans shall include guidelines and action plans to be taken to restore the D-SIB's financial condition to viable level in cases of significant deterioration in certain scenarios. This shall include specific initiatives appropriate to the bank's risk profile such as capital raising activities, streamlining of businesses, restructuring and disposal of assets, to improve capital position.

Appendix 110 of the MORB on the Framework for Dealing with Systematically important Banks is hereby amended, as follows:

- Intensive Supervisory Approach

  Banks identified as D-SIBs shall prepare concrete and reasonable recovery plans which shall be implemented in case the bank breaches the HLA capital requirement. Accordingly, D-SIBs shall ensure consistency and coherence of the ICAAP document and recovery plan. The ICAAP outcome and potential measures to address capital needs shall feed in without delay in the recovery plan, and vice versa, to ensure that the processes and information included in the said documents are consistent and up to date. The recovery plans shall include guidelines and action plans to be taken to restore the D-SIB's financial condition to viable level in cases of significant deterioration in certain scenarios. This shall include specific initiatives appropriate to the Bank's risk profile such as capital raising activities, streamlining of businesses, restructuring and disposal of assets, to improve capital position.

- Reporting Requirement and Review by the BSP

  1. The recovery plan shall be distinct and separate from the ICAAP document and shall be submitted every 30 June of each year. The submission of a separate recovery plan shall commence on 30 June 2022.

  2. The BSP shall review the recovery plan as part of the overall supervisory process for D-SIBs, focusing on assessing the recovery plan's robustness, credibility and ability to be effectively implemented.

Guidelines on Reputational Risk Management

Circular No. 1114 sets the guidelines on reputational risk management for BSP Supervised Financial Institutions (BSFIs).

Circular No. 1114 dated 16 April 2021

Sections 155/151-Q are hereby added to the MORB/ MORNBFI, respectively, to read as follows:

155/155-Q REPUTATIONAL RISK MANAGEMENT

- **Reputational risk** refers to the risk to earnings, capital, and liquidity arising from negative perception on the BSFI of its customers, shareholders, investors, and employees, market analysts, the media, and other stakeholders such as regulators and other government agencies, that can adversely affect the BSFI's ability to maintain existing business relationships, establish new business or partnerships, or continuously access varied sources of funding.

- **Sources of reputational risk**. The BSFI may be affected by perceptions of different stakeholders on its reputation that could be in relation to the areas of corporate and risk governance, personnel/ management ethics and integrity,

staff competence, organizational culture, business practices, product/ service quality, employee and customer relations including the handling of feedback or resolution of complaints, financial soundness/ business viability, and legal or regulatory compliance, among others. A clear understanding of the various sources of reputational risk and how these may impact the institution is crucial in determining the appropriate approach to managing reputational risk.

- Reputational risk is connected and related to other risk exposures (e.g., credit, market, liquidity, and operational risks) such that it can result from or may be triggered by other types of risks. Exposures to environmental, social and governance (ESG) risk factors, both direct and indirect through its lending and investment decisions, as well as the BSFI impact on ESG factors may likewise have material effect on the BSFI's reputation.

- **Sound corporate and risk governance frameworks, and effective internal control systems**. The establishment of strong corporate and risk governance frameworks, and effective internal control systems are the foundation to effectively manage reputational risk. Sound corporate governance fosters a culture where the board of directors/ trustees and senior management as well as officers and employees at all levels of the organization, align with the institution's desired values and conduct in pursuing corporate goals and objectives.

- **Roles and responsibilities**. The responsibility for managing reputational risk rests on the entire organization. Each employee can influence the stakeholders' perception on the institution through the individual's conduct. Governance and management of reputational risk require clear accountability and engagement across the various organizational functions. In this respect, the roles and responsibilities of the different parties are as follows:

    1. *Board of directors/ trustees*. The board of directors/ trustees shall establish the "tone of the top" and provide adequate oversight on matters relating to the BSFI's strategic direction, key policies, and risk appetite, and overall governance framework.

    2. *Senior management*. The senior management shall be responsible for the implementation of the board-approved reputational risk management framework.

    3. *Business units*. As the first line of defense, business line management and personnel shall ensure that all significant risks to the BSFI's reputation in their respective areas are identified and adequately managed.

    4. *Risk management function*. The risk management function/personnel shall be responsible for ensuring the oversight and coordination of reputational risk management efforts across the institution.

    5. *Compliance function*. The compliance function shall ensure that a robust compliance system is in place to ascertain that the BSFI conducts business in accordance with relevant laws, rules, regulations and internal policies.

    6. *Internal audit function*. The internal audit function shall provide an independent assessment of the adequacy of the risk management processes and internal control system as well as the effectiveness of actions taken to address material risks affecting the BSFI's reputation.

7. *Crisis management team*. The crisis management team (including the public relations unit or its equivalent) shall be responsible for formulating, implementing, and coordinating the approach to managing a reputation event.

- **Reputational risk management framework**. A BSFI shall adopt an appropriate reputational risk management framework as part of the enterprise risk management system that is commensurate to its size, nature and complexity of operations, overall risk profile, and systemic importance. The primary objective of sound reputational risk management is to identify potential reputational risks before they materialize or escalate beyond manageable level:

    1. *Risk identification and assessment*. Effective risk identification and assessment can disclose significant threats to reputation and identify areas requiring implementation of response plans. Such a process shall aid the board and management in determining whether to implement mitigation.

    2. *Risk control and mitigation*. BSFIs shall determine the appropriate measures to control and/or mitigate the impact of identified risks considering the results of risk assessment. BSFIs shall ascertain which of these risks warrant management attention and require either the crafting of a specific action plan (e.g., need to adopt additional controls or to strengthen existing controls), the development of a contingency plan, or close monitoring.

    3. *Risk monitoring and reporting*. BSFIs shall ensure that sufficient mechanisms are in place to monitor reputational risk across the different business lines and functions. Such a process shall enable the board and management to address any significant issues and developments.

    4. *Communications and disclosure*. Effective communications with stakeholders are vital in addressing reputational risk. Communication instruments include, among others, annual reports, website information, press releases, investor briefings, stakeholder forums, annual general meetings, media interviews, and social media platforms. BSFIs shall ensure the reliability, integrity and transparency of publicly reported information by maintaining effective internal control over financial reporting and information disclosures. Disclosure documents containing misleading or inaccurate statements, whether intentionally or inadvertently, may cause serious damage to reputation. Thus, there shall be adequate policies and procedures in place to ensure that all disclosures to stakeholders are clear, accurate, consistent, relevant and timely.

- **Crisis preparedness and resolution**. The manner by which BSFIs handle a reputation-damaging incident or crisis determines the magnitude and duration of the impact. Poor or delayed response to a crisis can increase reputational damage than the event itself, and possibly lead to a liquidity crisis and/or major disruptions to operations. Meanwhile, effective and timely crisis management arrangements, including stakeholders and media communications, could quickly allay stakeholder fears, regain their trust, and even enhance reputation.

- **Supervisory enforcement actions**. Consistent with Secs. 002/002-Q, the BSP reserves the right to deploy its range of enforcement actions to promote adherence with the requirements set forth in this Section and bring about timely corrective actions. The BSP may issue directives to improve the reputational risk management system or impose sanctions on the BSFI and/or its directors, officers and/or employees.

Sections 148-S/145-P/128-T/129-N are hereby added to the MORNBFI to read, as follows:

148-5/145-P/128-T/129-N REPUTATIONAL RISK MANAGEMENT

The guidelines on reputational risk management for QBs under Sec. 151-Q shall govern the reputational risk management of BSFIs to the extent applicable. The guidelines set out the supervisory expectations and the minimum prudential requirements in managing reputational risk. A BSFI is expected to adopt a reputational risk management framework that is commensurate to its size, nature and complexity of operations, overall risk profile, and systemic importance.

- Transitory Provision. The following is to be incorporated as a footnote to Sections 155/151-Q of the MORB/MORNBFI on *Reputational Risk Management*.

  BSFIs shall comply with the foregoing standards on reputational risk management within a period of 1 year from the effectivity of this issuance. In this regard, a BSFI should be able to show, upon request of the BSP, its plan of actions with specific timelines, as well as the status of initiatives being undertaken to fully comply with the provisions.

Amendments to the Manual of Regulations for Non-Bank Financial Institutions on the Enhancement of Corporate Governance Guidelines for Non-Stock Savings and Loan Associations

Circular No. 1115 amends the provisions of the MORNBFI on the enhancement of corporate governance guidelines for NSSLAs.

Circular No. 1115 dated 23 April 2021

Circular No. 1115 amends the provisions of Chapter D of Part One and Sections 131-S to 134-S. The provisions of Section 135-S are transferred to Section 136-S, and new provisions are added to Section 135-S. Sections 131-S to 136-S of the shall read as follows:

132-5 BOARD OF TRUSTEES

- **Powers/Corporate powers of the board of trustees (board)**. The corporate powers of an NSSLA shall be exercised, its business conducted, and all its resources controlled through its board. The powers of the board as conferred by law are original and cannot be revoked by the members. The trustees shall hold their office charged with the duty to exercise sound and objective judgment for the best interest of the NSSLA.

- **Composition of the board**. Pursuant to Sections 13 and 91 of Republic Act (R.A.) No. 11232, the number of trustees shall be fixed in the articles of incorporation or by-laws which may or may not be more than fifteen (15).

  To promote the independence of the board from the views of senior management, twenty percent (20%) of the board of trustees shall be independent trustees. For complex NSSLAs, there should be no less than two (2) independent trustees. Any decimal/fractional resulting from applying the required minimum proportion, i.e. twenty percent (20%), shall be rounded up to the nearest whole number.

  The board of trustees shall also ensure that the independent trustees function in an environment that allows them to effectively challenge the President/CEO as circumstances may warrant.

- **Qualifications of a trustee**. No person shall be eligible as trustee of an NSSLA unless he/she is a member of such NSSLA.

  In addition, a trustee shall have the following minimum qualifications:

  1. He/ She must be fit and proper for the position of a trustee.

     An elected trustee has the burden to prove that he/she possesses all the minimum qualifications and none of the cases mentioned under Section 136-S. A trustee shall submit to the BSP the required certifications and other documentary proof of such qualifications using the Appendix S-19 as guide, within 30 days from the date of election. The board of trustees shall be responsible to take actions to comply with BSP regulations. Inaction of the board of trustees shall be subject to appropriate supervisory enforcement actions.

  2. He/She must have attended a special seminar on corporate governance for board of trustees.

- **Chairperson of the board of trustees**

  1. **Roles of the Chairperson of the board of trustees**. The Chairperson shall provide leadership in the board of trustees.

  2. **Qualifications of the Chairperson of the board of trustees for complex NSSLAs**. The Chairperson of the board of trustees must be independent of management and free from any business or other relationship which could or could reasonably perceived to materially interfere with the exercise of independent judgment in carrying out the responsibilities of the said position. The positions of the Chairperson and President/CEO (or its equivalent title) shall not be held by one person. Incumbent Chairperson of the board of trustees concurrently holding the position of President/ CEO (or its equivalent title) shall be given a grace period of 1 year from date of effectivity of this Circular within which to relinquish either of the aforementioned positions.

- **Board of trustees meetings**. Meetings of the board of trustees may be held anywhere in or outside of the Philippines, unless the by-laws provide otherwise.

  1. **Full board of trustee meetings**. The meetings of the board of trustees may be conducted through modern technologies or alternative modes of communication such as, but not limited to, teleconferencing and video conferencing, that allow them reasonable opportunity to actively participate in the deliberations on matters taken up therein: *Provided*, That every member of the board shall participate in at least 50% of all board meetings every year.

  2. **Board-level committee meetings**. Board-level committees shall meet as prescribed in their respective charters. Participation of committee members may likewise be in person or through modern technologies. The attendance and participation of members in committee meetings shall be considered in the assessment of continuing fitness and propriety of each trustee as member of board-level committees and the board of trustees.

- **Duties and responsibilities of the board of trustees/trustees**

  Specific duties and responsibilities of the board of trustees.

  1. The board of trustees shall define the NSSLA's corporate culture and values.

  2. The board of trustees shall be responsible for approving NSSLA's objectives and strategies and in overseeing Management's implementation thereof.

  3. The board of trustees shall be responsible for the appointment/selection of key members of senior management and heads of control functions and for the approval of a sound remuneration and incentives policy for personnel.

  4. The board of trustees shall be responsible for approving and overseeing implementation of the NSSLA's corporate governance framework.

  5. The board of trustees shall be responsible for approving NSSLA's risk governance framework and overseeing Management's implementation thereof.

  Specific duties and responsibilities of a trustee. The position of an NSSLA trustee is a position of trust.

  1. To remain fit and proper for the position for the duration of his term.

  2. To conduct fair business transactions with the NSSLA and to ensure that personal interest does not bias board decisions.

  3. To act honestly and in good faith, with loyalty and in the best interest of the NSSLA, its members, regardless of the amount of their capital contributions, and other stakeholders such as its investors, creditors, other clients and the general public.

  4. To devote time and attention necessary to properly discharge their duties and responsibilities.

  5. To act judiciously.

  6. To contribute significantly to the decision-making process of the board.

  7. To exercise independent judgment.

  8. To have a working knowledge of the statutory and regulatory requirements affecting the NSSLA institution, including the content of its articles of incorporation and by-laws, the requirements of the BSP and where applicable, the requirements of other regulatory agencies.

  9. To observe confidentiality.

133-S BOARD-LEVEL COMMITTEES

The board of trustees may delegate some of its functions, but not its responsibilities, to board-level committees. In this regard, the board of trustees shall:

- Approve, review and update at least annually or whenever there are significant changes therein, the respective charters of each committee or other documents that set out its mandate, scope and working procedures.

- Appoint members of the committees taking into account the optimal mix of skills and experience to allow the board of trustees, through the committees, to fully understand and objectively evaluate the relevant issues.

- Ensure that each committee shall maintain appropriate records (e.g., minutes of meetings or summary of matters reviewed and decisions taken) of their deliberations and decisions.

- Constitute, at a minimum, the following committees:

  (1) Audit Committee; (2) Risk Oversight Committee; (3) Corporate Governance Committee; and (4) Membership Committee; Provided, That the board of trustees of simple NSSLAs may, at a minimum, constitute only the Audit Committee and Membership Committee unless directed by the BSP to create other board-level committees.

  Both complex and simple NSSLAs may constitute an Executive Committee, as provided under the Revised Corporation Code.

1. **Audit Committee**

   - **Composition and Chairperson**. The audit committee shall be composed of at least 3 members of the board of trustees. Majority of the members, including the chairperson shall be independent trustees. For a simple NSSLA, at least the chairperson shall be an independent trustee. The chairperson of the audit committee in a complex NSSLA shall not be the chair of the board or of any other board-level committee.

   - **Duties and responsibilities of the audit committee**. The audit committee shall:

     a. Oversee the financial reporting framework.

     b. Monitor and evaluate the adequacy and effectiveness of the internal control system.

     c. Oversee the internal audit function.

     d. Oversee the external audit function.

     e. Oversee implementation of corrective actions.

     f. Investigate significant issues/concerns raised.

2. **Risk Oversight Committee (ROC)**

   - **Composition**. The committee shall be composed of at least 3 members of the board of trustees, majority of whom shall be independent trustees, including the chairperson. For a simple NSSLA, at least one shall be an independent trustee. The ROC's chairperson shall not be the chair of the board or any other board-level committee.

   - **Duties and responsibilities of the ROC**. The ROC shall advise the board of trustees on the NSSLA's overall current and future risk appetite, oversee senior management's adherence to the risk appetite statement, and report on the state of risk culture of the NSSLA. The ROC shall:

     a. Oversee the risk management framework.

     b. Oversee adherence to risk appetite.

     c. Oversee the risk management function.

3. **Corporate Governance Committee (CGC)**

   - **Composition and Chairperson**. The committee shall be composed of at least 3 members of the board of trustees, majority of whom shall be independent trustees, including the chairperson. For a simple NSSLA, at least one shall be an independent trustee.

   - **Duties and responsibilities of the CGC**. The CGC shall assist the board of trustees in fulfilling its corporate governance responsibilities. In this regard, the CGC shall:

     a. Oversee the nomination process for members of the board of trustees and for positions appointed by the board of trustees.

     b. Oversee the continuing education program for the board of trustees.

     c. Oversee the performance evaluation process.

     d. Oversee the design and operation of the remuneration and other incentives policy.

4. **Membership Committee**

   - **Composition and Chairperson**. The committee shall be composed of at least 3 members of the board of trustees whose chairperson shall be an independent trustee.

     For a simple NSSLA, at least one shall be an independent trustee.

   - **Duties and responsibilities of the Membership Committee**. The committee shall be responsible for activities that promote membership growth, address members' welfare, and encourage the retention of existing members. In this regard, the committee shall:

     a. Ensure that members accepted are within the Association's "well-defined" group in accordance with the law and the Association's by-laws.

b. Recommend to the board of trustees membership marketing, recruitment and retention plans.

c. Provide training and orientation to members.

d. Ensure that members are given the opportunity to participate effectively and vote in general membership meetings and are informed of the rules, including voting procedures that govern the election of trustees.

e. Promote the rights of the members, remove impediments to the exercise of those rights, and provide an adequate avenue for them to seek timely redress for breach of their rights.

f. Make available to members accurate and timely information to enable them to make sound judgment on all matters brought to their attention for consideration or approval.

g. Ensure that all members are treated fairly, equitably and without discrimination.

h. Recommend the adoption of a consumer protection program and oversee its implementation.

Section 134-S OFFICERS

An officer must be fit and proper for the position he is being appointed to. In determining whether a person is fit and proper for the position of an officer, the following matters must be considered: integrity/probity, education/training, and possession of competencies relevant to the function such as knowledge and experience, skills and diligence.

An officer shall submit to the BSP the required certifications and other documentary proof of such qualifications using Appendix S-19 as guide, within 20 business days from the date of meeting of the board of trustees in which the officer is appointed/ promoted. The board of trustees shall be responsible to take actions to comply with BSP regulations.

The foregoing qualifications for officers shall be in addition to those required or prescribed under R.A. No. 8367, as amended, and other existing applicable laws and regulations.

Duties and responsibilities of officers:

- To promote the good governance practices within the NSSLA.
- To oversee the day-to-day management of the NSSLA.
- To ensure that duties are effectively delegated to the staff and to establish a management structure that promotes accountability and transparency.
- To promote and strengthen checks and balances systems in the NSSLA.

- **President/CEO**. The President or the CEO (or its equivalent title) shall be the overall-in-charge for the management of *time* business and *chairs* of the NSSLA governed by strategic direction and risk appetite approved by the board of trustees. He shall be primarily accountable to the board of trustees in championing the desired conduct and behavior, implementing strategies, and in promoting the long-term interest of the NSSLA.

- **Full-time Manager for NSSLAs**. NSSLAs with total assets of at least P5.0 million shall maintain a full-time manager to take charge of the operations of the NSSLA. The manager shall possess all the qualifications and shall not have any disqualification under Sec. 134-S *(Qualifications of officers)* and Sec. 136-S *(Persons disqualified to become officers)*, respectively.

- **Bonding of Officers and Employees**. All officers and employees of an NSSLA who, in the regular discharge of their duties have access to money or negotiable securities shall, before entering upon such duties, furnish to the employing NSSLA a good and sufficient bond and providing for indemnity to the NSSLA against the loss of money or securities, by reason of their dishonesty.

Section 135-S ELECTION/APPOINTMENT OF TRUSTEES AND OFFICERS

Confirmation of election/appointment of trustees/officers

- **Confirming Authority**. The election/appointment of trustees/officers shall be subject to confirmation by the following:

Confirming Authority	Position Level
1. Monetary Board	Trustees and president/chief executive officer (or equivalent rank) of NSSLAs with total assets of at least P10 billion
2. FSS Committee	▸ Trustees and President/ Chief Executive Officer (or its equivalent position) of NSSLAs with total assets of less than P10 billion ▸ Treasurer and heads of internal audit, risk management and compliance functions, and other officers with rank of senior vice president and above (or equivalent ranks) of NSSLAs

Provided, That NSSLAs shall report to the appropriate department of the FSS, any succeeding resignation, retirement, or replacement of aforesaid trustees/ officers within 20 business days after such resignation/retirement/replacement.

- The election/appointment of above mentioned trustees/ officers shall be deemed to have been confirmed by the BSP, if after 60 business days from receipt of the complete required reports, the appropriate supervising department of the FSS does not advise the NSSLA concerned against said election/appointment.

  However, the confirmation by the Monetary Board/FSS Committee of the election/appointment to abovementioned position levels shall not be required in the following cases:

  1. Re-election/re-appointment of a trustee/officer concerned in the same NSSLA; and

2. Promotion of an officer, other than to that which requires a different level of confirming authority as provided in the first paragraph hereof, in the same NSSLA: *Provided*, That the trustee/officer concerned has been previously confirmed as provided in the first paragraph hereof: *Provided, further*, That said trustee/officer has had continuous service within the same NSSLA.

The appointment of officers other than the abovementioned position levels shall not be subject to Monetary Board approval or BSP confirmation.

- The required certifications and other documentary proof of qualification for the confirmation of the election/appointment of trustees/officers of NSSLAs are shown in Appendix S-19.

  Non-submission of complete documentary requirements within the prescribed period shall be construed as his/her failure to establish his/her qualifications for the position.

  The board of trustees shall be responsible to take actions to comply with BSP regulations. Inaction of the board of trustees shall be subject to appropriate supervisory enforcement actions.

142-S RISK MANAGEMENT FUNCTION.

An effective independent risk management function is a key component of the NSSLA's second line of defense.

153-S INTERNAL AUDIT FUNCTION.

An effective and efficient internal audit function constitutes the third line of defense in the system of internal control.

Internal Audit is an independent, objective assurance and consulting function established to examine, evaluate and improve the effectiveness of internal control, risk management and governance systems and processes of an organization, which helps management and the board of trustees in protecting the NSSLA and its reputation.

Appendix S-2 of the MORNBFI is hereby amended to include certifications required to be submitted to the BSP by trustees under Section 135-S of the MORNBFI.

A list of documentary requirements to be submitted to the BSP for the election/ appointment of trustees/officers of NSSLAs pursuant to Section 135-S of the MORNBFI is hereby added as Appendix S-19 of the MORNBFI.

The footnote to Subsection 151-S *(Chief Compliance Officer)* on the definition of Complex NSSLAs shall be amended as follows:

xxx As defined under Section 131-S(a),complex NSSLAs shall refer to institutions declared by the BSP as such with total assets of at least P6 billion and having at least any one of the following characteristics: (1) broad membership base which means that the number exceeded 2000 members; (2) use of non- conventional business model, such as those using non-traditional delivery platform such as electronic platforms and agents; or (3) extensive network of service units wherein there are five (5) or more service units, whether branches or satellite offices, and regardless of geographical location.

The following provision shall be incorporated as a footnote to Chapter D *(Corporate Governance)* of the MORNBFI:

An NSSLA shall be given a transition period of 1 year from date of effectivity of this Circular within which to comply with the herein requirements and to amend the pertinent provisions of its articles of incorporation and/or by-laws to effect corresponding changes.

Other SEC Updates

The SEC updated the lists of exempt securities and exempt transactions, amending Rules 9 and 10 of the SRC.

SEC Memorandum Circular No. 6, Series of 2021

Exempt Securities

- The following securities are not, as a general rule, subject to the registration requirements and procedures under Sections 8 and 12 of the SRC:

    1. Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government;

    2. Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity, provided, that the SEC may require compliance with the form and content for disclosures the SEC may prescribe;

    3. Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body;

    4. Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue; and

    5. Any security issued by a bank except its own shares of stock.

- The registration requirements shall not apply also to these securities:

    1. Any evidence of indebtedness issued by a financial institution that has been licensed by the BSP to engage in banking or quasi-banking;

    2. Evidence of indebtedness issued to the BSP under its open market and/or rediscounting operations;

    3. Bills of exchange arising from a bona fide sale of goods and services that are distributed and/or traded by banks or investment houses duly licensed by the SEC and BSP through an organized market that is operated under the rules approved by the SEC;

    4. Any security issued or guaranteed by multilateral financial entities established through a treaty or any other binding agreement to which the Philippines is a party or subsequently becomes a member (referred as Multilateral Financial Entities or MFE) (e.g., international financial institutions, multilateral development banks, development finance

institutions or any other similar entities); or by facilities or funds established, administered, and supported by MFEs, provided that the issuer shall file an offering circular/ memorandum in an SEC-prescribed format containing information about (1) the issuer and security to be issued, (2) the MFE, and (3) the guarantee, among others.

5. The registration requirements shall not likewise apply to evidence of indebtedness (e.g., commercial papers), that meet the following conditions:

    1. Issued to not more than 19 non-institutional lenders;
    2. Payable to a specific person;
    3. Neither negotiable nor assignable and held on to maturity; and
    4. In an amount not exceeding P150 Million or a higher amount prescribed by the SEC.

- Notwithstanding that a particular class of securities is exempt from registration, the conduct by any person in the purchase, sale, distribution of such securities, settlement and other post -trade activities shall comply with the SRC provisions and rules. Moreover, the purchase and sale of such security shall not be exempt from the coverage of the SRC provisions on civil and other related liabilities, and applicable provisions on fraud.

- Consistent with public interest and to protect investors, the SEC, may require an issuer of a class of securities exempted from registration, to make available to investors and file with the SEC periodic disclosures regarding the issuer, its business operations, its financial condition, its governance principles and practices, its use of investor funds, and other appropriate matters, and may provide for suspension and termination of such requirement with respect to such issuer.

- The SEC may, by rule or regulation after public hearing, add to the foregoing any class of securities if it finds that the enforcement of the SRC with respect to such securities is necessary in the public interest and for the protection of investors.

Exempt Transactions

- The offer or sale of securities issued and sold to the following qualified buyers are not subject to the provisions of Sections 8 and 12 of the SRC:

    1. Bank;

    2. Registered investment house;

    3. Insurance company;

    4. Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof, or managed by a bank or other persons authorized by the BSP to engage in trust functions;
    5. Registered securities dealer;

    6. An account managed by a registered broker under a discretionary arrangement as provided for in the relevant provisions in the SRC 2015 Rules;

    7. Registered investment company (e.g., mutual fund companies);

8. Provident fund or pension fund maintained by a government agency, or by a government or private corporation and managed by an entity authorized by the BSP or the SEC to engage in trust function or fund management;

9. A trust corporation that is authorized by the BSP to perform the acts of a trustee;

10. Unit investment trust funds established in accordance with BSP rules and regulations;

11. A fund established and covered by a trust or investment management agreement (IMA) under a discretionary arrangement, i.e., the entity managing the fund is granted authority to decide on the investment of the trust funds or IMA funds, in accordance with BSP rules and regulations;

12. A fund established and covered by a trust or IMA under a non-discretionary arrangement in accordance with BSP rules and regulations, provided that (i) the beneficial owners or principals of such fund possess the qualifications on financial capacity and sophistication as specified in the 2015 SRC Rules, and (ii) the treatment of such fund as qualified buyer does not contravene the trust or IMA;

13. A fund established and covered by a trust or IMA wherein the beneficial owner or principal of the fund has been deemed or conferred as a qualified buyer under the SRC or its Rules; and

14. An entity with quasi bank license issued by BSP;

15. Pre-need company authorized by the Insurance Commission;

16. Collective Investment Scheme authorized by the relevant regulatory authority pursuant to existing laws and regulations;

17. A listed entity on the Philippine Stock Exchange (PSE), or a related body corporate of a PSE-listed entity provided that it engages the service of a professional fund manager, through direct hire or via outsourcing to an authorized fund management entity;

18. A foreign entity not being established or incorporated in the Philippines that, if established or incorporated in the Philippines, would be covered by one of the preceding paragraphs; and

19. Such other person as the SEC may by rule or order determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.

(Editor's Note: The SEC MC was filed with the UP Law Center *on 22 April 2021 and published in the* Philippine Star *and* Manila Bulletin *on 23 April 2021)*

The SEC issued rules on the calling of special stockholders' meetings by minority shareholders of a publicly-listed company.

SEC Memorandum Circular No. 7, Series of 2021 dated 23 April 2021

- Any number of shareholders holding at least 10% of outstanding capital stock of a publicly-listed company (PLC) shall have the right to call for a special stockholders' meeting.
- The shareholders shall have continuously held the shares for at least one year prior to the receipt by the corporate secretary of the written call for a special meeting.
- The request must be in writing and duly signed by all the requesting shareholders. It must include the following:
    1. The name of the stockholders and their respective percentage of shareholdings;
    2. Purpose, date, time and agenda items for the meetings; and
    3. The proposed agenda items should be matters that affect legitimate interests of the shareholders on corporate actions where stockholders' approval is required under the Revised Corporation Code, except the right to remove a director.
- No stockholder may likewise call for a special meeting within 60 days from the previous meeting of the same nature where the same matter was discussed, unless allowed by the bylaws of the corporation and approved by the board.
- A stockholders' meeting cannot be called if agenda will be covered in the next regular or special meeting scheduled not later than 30 days from the date of the request or if the agenda has already been discussed and resolved with finality in previous meetings.
- The MC shall take effect upon its publication in 2 newspapers of general circulation in the Philippines.

(Editor's Note: The SEC MC was filed with the UP Law Center *on 23 April 2021 and published in the* Philippine Daily Inquirer *and* Business Mirror *on 24 April 2021)*

Issuance of shares to existing stockholders in relation to an increase in authorized capital stock is exempt from the requirement of registration with the SEC if the corporation will not incur expenses in connection with the such sale or issuance of shares.

SEC Office of the General Counsel Opinion No. 21-05 dated 7 May 2021

Facts:

The stockholders of a corporation ratified a board resolution increasing the authorized capital stock (ACS) from P100 million to P250 million, thereby increasing the number of shares from 50,000 to 125,000 at a par value of P2,000 per share.

Issue:

Do these shares need to be registered with the SEC considering that they are offered only to existing stockholders, and not to the public?

Ruling:

No. In the absence of any showing that the corporation has incurred or will incur expenses in connection with the sale of capital stocks exclusively to its shareholders pursuant to an increase in ACS, the sale is an exempt transaction that does not require any registration with the SEC.

In general, securities cannot be sold or offered for sale within the Philippines without a registration statement duly filed and approved by the SEC. Sections 10 (e) and (i) of the Securities Regulation Code (SRC) exempt certain transactions from the registration requirement:

- The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock; or

- Subscriptions for shares of capital stock of a corporation in pursuance of an increase in ACS, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscription is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before its authorized capital is increased.

If a commission or fee is paid, directly or indirectly in connection with the sale of such capital stock, or the corporation incurs an expense in the sale or disposition of securities, the sale must be registered with the SEC.

Hence, for the transaction to be exempt from registration, it must be shown that (a) no amount in addition to the sale price of the capital stock is paid/given in relation to such sale, which is the concept of "direct commission or remuneration", or (b) no transaction or service is carried out or performed which will benefit another person / entity other than the stockholder purchasing the capital, which is by the concept of "indirect commission or remuneration." The transaction will not be exempt if it is carried out with the assistance of a financial advisor because expenses are deemed to have been incurred.

To sustain a conviction for willfully failing to pay the correct tax under Section 255 of the NIRC, the following elements must be established beyond reasonable doubt:

1. The taxpayer is required under the NIRC or its rules and regulations to pay any tax;

2. The taxpayer failed to pay the required tax at the time required by law or rules and regulations; and

3. The taxpayer willfully fails to pay the tax.

The second and third elements are dependent on the first element. Thus, it is only when the first element is established that the remaining elements must be determined to exist as there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

In the absence of a valid assessment for deficiency tax, the first element of the crime charged is not present.

CTA Cases

Violation of Tax Code

People of the Philippines v. Cross Country Oil & Petroleum, Corp., Arturo M. Zapat and Jacob Valeriano, Jr.

Facts:

The BIR issued a Final Assessment Notice (FAN) accompanied by a Formal Letter of Demand (FLD) requiring Company A to pay deficiency income tax, surcharge and interest for the taxable year (TY) 2009. Company A, through its lawyer, filed a Protest against the FAN/FLD. Subsequently, the BIR filed a criminal case charging the accused, as represented by its officers, of the crime "Willful Failure to pay taxes on Income Tax" for TY 2009 under Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended (Tax Code). The accused contend that after filing the Protest against the FAN/FLD, they did not hear anything from the BIR nor did they receive a decision on their protest. On the other hand, the prosecution argues that the Final Decision on Disputed Assessment (FDDA) was served through registered mail and the same was received by the accused as shown in the Registry Return Receipt.

Issue:

Are the accused liable for willful failure to pay deficiency income tax under Section 255, in relation to Sections 253 (d) and 256 of the Tax Code?

Ruling:

No. To sustain a conviction for willfully failing to pay the correct tax under Section 255 of the Tax Code, the following elements must be established beyond reasonable doubt:

1. the taxpayer is required under the NIRC or its rules and regulations to pay any tax;

2. the taxpayer failed to pay the required tax at the time required by law or rules and regulations; and

3. the taxpayer willfully fails to pay the tax.

The second and third elements are dependent on the first element. Thus, it is only when the first element is established that the remaining elements must be determined to exist as there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

The legal obligation to pay tax under the Tax Code arises from two (2) specific instances: first, at the time required by the law to pay a particular tax; or second, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period. Under the second instance, the deficiency tax assessment shall then be paid by the taxpayer upon notice and demand. These notice and demand are predicated upon a valid assessment issued in full compliance with the requirements on procedural due process.

Thus, the Court ruled that it is necessary to examine the validity of the subject assessment, and upon its examination of the FLD/FAN and the FDDA, noted the following procedural defects:

1. *The FLD/FAN is void for failure to definitely set and fix the amount of income tax liability.*

   The FLD states that the interest and total amount due shall be adjusted up to the actual date of payment. While the subject FLD presented computations of the supposed tax liabilities of accused corporation, the amount stated therein remains indefinite, since the tax due is still subject to modification. The foregoing uncertainty falls short of the requirement that the written notice contain a demand from the taxpayer for the "settlement of a due tax liability that is there definitely set and fixed."

2. *The FDDA is void for failure to state the facts and applicable law, rules and regulations, or jurisprudence on which the final decision is based.*

   A perusal of the FDDA shows that it does not contain any statement of facts, law or jurisprudence, on which the decision is based, in contravention of Section 3.1.6 of Revenue Regulation (RR) No. 12-99. Thus, the subject FDDA is likewise void and of no effect.

3. *The prosecution failed to prove that the FDDA was actually received by the accused.*

   While the registry receipt may prove the fact of mailing, the prosecution fell short in establishing actual receipt of the FDDA. The registry return receipt is inconclusive to prove that the FDDA was in fact mailed to accused corporation since it does not indicate the corresponding registry receipt number. Thus, the Court rules that it could not confirm whether the said registry receipt actually pertains to the subject FDDA. The prosecution also failed to prove that the signature of the recipient of the registry return receipt belongs to the accused corporation's authorized representative.

   As the subject FLD/FAN and FDDA are void, it therefore follows that the legal obligation on the part of the accused to pay the subject deficiency tax assessments did not arise. In the absence of a valid assessment for deficiency tax, the first element of the crime charged is not present. Hence, the accused cannot be said to have failed to pay the deficiency income tax (second element) much more to have done so willfully (third element) - as required under the afore-quoted Section 255 of the NIRC, as amended.

Tax Assessment

Nowhere in the regulations or in existing jurisprudence is there any mention of a requirement that the LOA must bear a dry seal to be valid.

Donato C. Cruz Trading Corp. vs. Commissioner of Internal Revenue
CTA Case No. 9721 promulgated 19 March 2021

Given the petitioner's failure to present contrary evidence, the presumption of regularity in the BIR's performance of duty and the finding that the Notice of Designation as a top 10,000 corporation was received in the ordinary course of mail shall prevail.

Upon the effectivity of RR 3-2004, the payment to regular supplier of agricultural products as a separate category for EWT purposes was rendered inoperative. As a duly notified top 10,000 private corporation, Company A is now obliged to withhold the 1%/2% to its regular suppliers

Facts:

Based on a revalidated LOA, the BIR assessed Company A for deficiency withholding and value-added taxes for TY 2006. After the BIR issued its FDDA in 2012 and its subsequent denial of Company A's Motion for Reconsideration in 2017, Company A filed a Petition for Review before the CTA, arguing, among others, the following:

1. That the LOA issued by the BIR was invalid because it did not bear a dry seal; and

2. That it is not liable to withhold on its payments to suppliers of agricultural products for the following reasons: (a) It was not duly notified as a Top 10,000 corporation because the person who received the notice had no authority to do so; and (b) Revenue Regulations ("RR") No. 3-2004 suspended the 1% withholding tax on income payments to suppliers of agricultural products, and the later Revenue Memorandum Circular ("RMC") No. 44-2007, which clarified that the suspension under RR 3-2004 does not cover Top 10,000 corporations (thus, still required to withhold), cannot be applied as the RMC is not merely an interpretative rule that may be applied retroactively to Company A.

Issue:

Is Company A liable for the deficiency taxes?

Ruling:

Yes, Company A is liable to pay the deficiency taxes because the LOA was valid, Company A was duly notified as a top 10,000 corporation and RMC 44-2007 is an interpretative regulation that may be applied retroactively.

On the validity of the LOA

Based on Revenue Audit Memorandum Order ("RAMO") No. 2-95 and RAMO No. 1-00, the requisites of a valid LOA are:

1. It must be issued by the proper approving official;

2. It must contain the names/ of the designated revenue officer/s, who is/are authorized to examine and scrutinize the taxpayer's books and records;

3. It must cover a particular period (e.g., 1 taxable year); and,

4. It must be served to the taxpayer within 30 days from its date of issue.

Although the LOA reflects a notation that the absence of a dry seal makes it void, a perusal of the LOA reveals that it is compliant with the foregoing requisites stated under the RAMO, and nowhere in RAMO 1-00 or in existing jurisprudence is there any mention of a requirement that the LOA must bear a dry seal to be valid.

On the liability to withhold on income payments to agricultural suppliers

Company A's reliance on the absence of a proper service to invalidate the notification applies to service of summons and not to mere notices, and it may be presumed that a letter duly sent by the BIR to the taxpayer is received by the latter in the ordinary course of mail. Given the petitioner's failure to present contrary evidence, the presumption of regularity in the BIR's performance of duty and the finding that the Notice of Designation as a top 10,000 corporation was received in the ordinary course of mail shall prevail.

Regular agricultural suppliers are specifically mentioned in RR 2-98 regardless of the payor's taxpayer type. Thus, Company A's payments to its agricultural suppliers are subject to 1% withholding tax prior to the effectivity of RR 3-2004. RR 2-98, as amended, likewise mentions that the withholding tax rates for top 10,000 corporations shall apply only if there are no other tax rates provided in the Regulations which is not the case for payments made to regular suppliers of agricultural products. However, upon the effectivity of RR 3-2004, the payment to regular supplier of agricultural products as a separate category for EWT purposes was rendered inoperative. As a duly notified top 10,000 private corporation, Company A is now obliged to withhold the 1%/2% to its regular suppliers (on such basis).

RMC 44-2007 was intended "to clarify the position of the Bureau" on the taxability of agricultural suppliers for withholding tax purposes in respect to sales made to top 10,000 corporations and would show that the RMC merely reiterates and clarifies the effect of RR 3-2004.

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

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