

Tax Bulletin

June 2021

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Table of contents

I. BIR Administrative Requirements	Page number
Revenue Memorandum Circular (RMC) No. 65-2021 prescribes the guidelines in the filing of Quarterly Percentage Tax Return (BIR Form No. 2551Q), where the tax rate has been decreased from 3% to 1% starting 1 July 2020 to 30 June 2023 pursuant to the passing of Republic Act (RA) No. 11534 also known as the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE).	6
RMC No. 66-2021 is issued to disseminate the availability of BIR Forms 1702Q January 2018 (ENCS) in the Electronic Filing and Payment System (EFPS) and BIR Form 1702Qv2008C in the Electronic Bureau of Internal Revenue Forms (eBIRForms).	7
RMC No. 68-2021 was issued to prescribe the guidelines in the filing of BIR Form No. 1702Q (Quarterly Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayers) January 2018 (ENCS) in the eFPS by taxpayers with fiscal year accounting period.	7
RMC No. 75-2021 was issued to prescribe the standard policy and guidelines on the use of BIR Form No. 0605 for Excise Tax purposes, thereby amending RMC No. 97-2020.	8
II. Other BIR Issuances	
Revenue Regulation (RR) No. 7-2021 implements the Provisions of Republic Act Nos. 11346 and 11467, Relative to the Excise Tax on Alcohol Products, Tobacco Products, Heated Tobacco Products, Vapor Products and Disposition of Excise Tax Collection.	8
RR No. 8-2021 amends certain provisions of RR No. 4-2021 dated 8 April 2021, which implemented the value added tax (VAT) and Percentage Tax provisions of the the CREATE Act.	12
RR No. 9-2021 amends certain provisions of RR No. 16-2005, as amended by RR No. 13-2018, as further amended by RR No. 26-2018 to implement the imposition of 12% VAT on the transactions covered under Section 106 (A)(2)(a) subparagraphs (3), (4) and (5), and Section 108 (B) subparagraphs (1) and (5) under the Tax Code, as Amended by the TRAIN Law.	13
RMC 62-2021 clarifies certain provisions of RR No. 5-2021 relative to Corporate Income Taxation.	15
RMC No. 67-2021 clarified the issues related to the temporary reduction of Percentage Tax rate imposed under Section 116 of the NIRC of 1997, as amended by Section 13 of the CREATE Act.	16
RMC No. 76-2021 clarifies the illustrative examples on how the income tax of corporation shall be computed.	18
RMC No. 77-2021 addresses the frequently asked questions regarding the availment of treaty benefits and clarify certain provisions of Revenue Memorandum Order (RMO) No. 14-2021.	19

III. Bureau of Customs	
Clearance of Goods Under the Informal Entry Process	
Customs Administrative Order (CAO) No. 2-2021 applies to all importations cleared through the Informal Entry Process whether or not subject to payment of duties and taxes except accompanied baggage. On the other hand, De Minimis importations and relief consignments shall be covered by their respective regulations.	21
Guidelines for the Implementation of the General Warehousing Bond (GWB) thru the Automated Bonds Management System (ABMS)	
Customs Memorandum Order (CMO) No. 17-2021 applies to all Warehousing Bond Accounts opened under the Electronic to Mobile (E2M) Customs System in all Collection Districts, including sub-ports and other BOC offices.	23
Revised Rules and Regulations on the Opening and Utilization of Prepayment Accounts	
CMO No. 18-2021 is issued to provide an alternative mode of payment of duties, taxes and other charges for all goods declarations lodged through the E2M. It covers goods for consumption (formal), transit, warehousing, export, informal entry, and trans-shipment.	24
Implementation of the Automated Inventory Management Systems (AIMS) by All Registered Customs Bonded Warehouses	
CMO No. 20-2021 provides the guidelines in the operations and use of AIMS for imported raw materials entered into registered Customs Bonded Warehouses (CBWs), regardless of type or classification.	25
Implementing Guidelines in the Admission, Movement and Withdrawal of Goods in the New Clark City (NCC)	
CMC No. 103-2021 circularized Joint Memorandum Order (JMO) No. 01-2021 providing the procedure in the admission, movement and withdrawal of goods in the New Clark City (NCC).	27
Lower Rates of Import Duty on Rice pursuant to EO No. 135 (series of 2021)	
CMC No. 108-2021 imposed lower Most Favored Nation (MFN) tariff rates on rice imports in view of the effectivity of Executive Order (EO) No. 135 (series of 2021).	27
Procedural Codes Created in the E2M System relative to the Implementation of "CREATE" Act	
With reference to BIR RR No. 4-2021 on the effectivity of the CREATE Act, new procedural codes have been created.	28
Reiteration of Department of Environment and Natural Resources (DENR) Administrative Order (DAO) No. 2013-22 on Importation of Used of Waste Shredded/Cut Rubber Tires	
CMC No. 122-2021 announces the reiteration by the Environmental Management Bureau (EMB) of DENR that used, or waste shredded/ cut rubber tires are not listed in the allowable recyclable materials in DAO No. 2013-22 of the Revised Procedures for the Management of Hazardous Wastes. Accordingly, importation of the above-mentioned product is not allowed.	28

Effectivity of the New Certificate of Origin Form D	
The new Certificate of Origin Form D is already available at the Customer Care Center (CCC). In this regard, all exporters are hereby advised to use the said CO Form D starting June 16, 2021 for processing of their export goods within ASEAN Member States (AMS) given that the old CO Form D will no longer be accepted by AMS starting 1 August 2021.	28
IV. Banks and Other Financial Institutions	
Guidelines on the Management of Liquidity Risk by Islamic Banks and Islamic Banking Units	
Circular No. 1116 provides guidelines on the management of liquidity risk by Islamic Banks (IBs) and Islamic Banking Units (IBUs).	29
Implementation of Republic Act (R.A.) No. 11523, otherwise known as the "Financial Institutions Strategic Transfer (FIST) Act	
Circular No. 1117 publishes Resolution No. 610 dated 20 May 2021, approved the amendments to the Manual of Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) to implement R.A. No. 11523, otherwise known as the FIST Act, and its Implementing Rules and Regulations (IRR) for BSP Supervised Financial Institutions (BSFIs).	30
Guidelines on Disclosure and Transparency of Remittance and Transfer Companies and their Remittance Sub-Agents	
Memorandum No. M-2021-032 covers all remittance and transfer companies.	33
Anti-Money Laundering Council (AMLC) 2021 Suspicious Transaction Report (STR) Quality Review	
Circular Letter No. CL-2021-044 covers all BSFIs.	34
Guidelines for Obtaining a Certificate of Eligibility (COE) under RA No. 11523, otherwise known as the Financial Institutions Strategic Transfer (FIST) Act	
Memorandum No. M-2021-034 provides guidelines for BSFIs that intend to obtain a COE for purposes of availing of the tax exemptions and privileges for the sale/transfer of non-performing asset/s (NPA) to a FIST corporation (FISTC) or to an individual or for transactions involving <i>dacion en pago</i> by the borrower or by a third party on behalf of a borrower to a BSFI.	35
V. SEC Filing, Payments and Other Deadlines	
Extension of the Deadline for the Submission of Forms/Notices pursuant to SEC MC No. 28, Series of 2020 (Creation/Designation of email account addresses and mobile phone numbers for transactions with the SEC)	
The SEC extended the deadlines the for submission of the Annual Reports for Calendar Year ending December 30, 2020 and the Quarterly Report for the period ending 1 March 2021.	38

Revised Guidelines on the Submission of Documents, Issuance of Payment Assessment Form, Other Requests, and Compliance	
The SEC provided revised guidelines on the submission of documents, issuance of payment assessment forms, other requests, and compliance requirements of investment companies, registered issuers of proprietary and non-proprietary shares/timeshares, public companies, financing companies, lending companies, foundations, accredited microfinance NGOs, corporate governance institutional training providers, and publicly-listed companies under the supervision of the SEC's Corporate Governance and Finance Department.	38
Extension of the Deadline for the Submission of Annual Reports for the Calendar Year ended December 31, 2020 and Quarterly Report as of 31 March 2021	
The SEC extended the deadlines for submission of the Annual Reports for Calendar Year ending December 30, 2020 and the Quarterly Report for the period ending 1 March 2021.	45
Extension of the Deadline to File Mandatory Declarations under the Beneficial Ownership Transparency Guidelines	
The SEC extended the deadline to file mandatory declarations under Sections 6 and 7 of SEC MC No. 01, Series of 2021 (Beneficial Ownership Transparency Guidelines) to 31 July 2021.	45
Registration with the Anti-Money Laundering Council and Submission of Proof of Registration	
The SEC reminded all newly covered financing companies and lending companies under SEC MC No. 04, Series of 2021 to register with the Anti-Money Laundering Council (AMLC) and ensure Submission of Proof of Registration.	45
Submission of Money Laundering and Terrorist Financing Prevention Program	
The SEC reminded all newly covered financing companies and lending companies under SEC MC No. 04, Series of 2021 and those applying for a Certificate of Authority to operating a financing company or a lending company to submit a Money Laundering and Terrorist Financing Prevention Program (MTPP).	46
VI. Supreme Court Cases	
When a business is transferred in exchange for shares, the goodwill of the business is also transferred	
Goodwill is an intangible asset derived from the conduct of business and cannot be transferred separately and independently from the business as a whole. When a business is transferred in exchange for shares, the goodwill of the business is also transferred. The share transfer is subject to capital gains tax and not to ordinary income tax.	48
VII. CTA Cases	
Tax Refunds	
For a VAT registered person claiming VAT zero-rated direct export sales, such person must present at least three (3) types of documents to qualify.	49

BIR Administrative Requirements

RMC No. 65-2021 prescribes the guidelines in the filing of Quarterly Percentage Tax Return (BIR Form No. 2551Q), where the tax rate has been decreased from 3% to 1% starting 1 July 2020 to 30 June 2023 pursuant to the passing of RA No. 11534 also known as the CREATE Act.

RMC No. 65-2021 dated 20 April 2021

- ▶ Taxpayers who are going to amend their filed quarterly returns to reflect the excess percentage tax payment made and to be carried forward to the succeeding taxable quarter/s shall follow these:

Type of filer	BIR Form	Line Item and Description	Remarks
Manual and eBIRForms Filers/Users	2551Q January 2018 (ENCS)	Line 17 - Other Tax Credit/Payment	Specify in the space provided the "Carry-Over Excess Percentage Tax (PT) Paid from Previous Quarter/s"
eFPS Filers/Users	2551 February 2002 (ENCS)	20A Creditable Percentage Tax Withheld per BIR Form No. 2307	Where the amount of Carry-Over Excess Percentage Tax Paid from Previous Quarter/s will be reflected

- ▶ To validate the return in eFPS and eBIRForms, the filer shall mark the option "To be issued a Tax Credit Certificate" which is presumed that the taxpayer will carry over the overpaid tax to the succeeding taxable quarter/s once the said option was chosen. For manual filers, neither of the options "To be Refunded" or "To be Issued a Tax Credit Certificate" shall be marked in the said tax return but rather write the phrase "To be Carried Over" on the return. The same procedure shall be undertaken, whether the return was filed manually or electronically, by the taxpayer subject to percentage tax until the overpaid amount has been fully utilized.

RMC No. 66-2021 is issued to disseminate the availability of BIR Forms 1702Q January 2018 (ENCS) in the EFPS and BIR Form 1702Qv2008C in the eBIRForms.

RMC No. 66-2021 dated 18 May 2021

- ▶ BIR Form 1702Q January 2018 (ENCS) -
 1. BIR Form 1702Q January 2018 (ENCS) is already available in EFPS and the reduced rates under Republic Act 11354 also known as Corporate Recovery and Tax Incentives for Enterprises Act or CREATE Act are already included/updated.
 2. Taxpayer shall select the Alphanumeric Tax Code (ATC) with the corresponding tax rate to be used.
 3. Non-individual EFPS users shall file their quarterly income tax returns [BIR Form 1702Q January 2018 (ENCS)] using the EFPS facility.

▶ BIR Form 1702Qv2008C -

1. The January 2018 version is not yet available in the Offline eBIR Forms Package, but the 2008 version has been modified as follows:

Item/Field No.	Description	Remarks
25B	Tax Rate (except MCIT Rate)	Fields/Items are editable and enterable
Schedule 1	Tax Rate (in row 2)	Fields/Items are editable and enterable

2. The abovementioned version of the form is already available in the Offline eBIR Forms Package v7.9.1 and the new package is downloadable from the following sites:
 - ▶ www.bir.gov.ph ; and
 - ▶ www.knowyourtaxes.ph
3. Non-individual eBIR Form users shall file their quarterly income tax return by using the BIR Form No. 1702Q2008C in the Offline eBIR Forms Package v7.9.1.
4. Payment of the tax due thereon, if any, shall be made manually or online.

RMC No. 68-2021 prescribes the guidelines in the filing of BIR Form No. 1702Q (Quarterly Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayers) January 2018 (ENCS) in the eFPS by taxpayers with fiscal year accounting period.

RMC No. 68-2021 dated 26 May 2021

- ▶ eFPS filers with Fiscal Year Accounting Period who cannot proceed in the filing of BIR Form No. 1702Q are advised to do the following:

1. File BIR Form No. 1702Q using Offline eBIRForms Package v7.9.1

The January 2018 version of the form is not yet available in the Offline eBIRForms Package. Instead, BIR Form No. 1702Qv2008C (modified 2008 version) shall be used and the same is already available in the Offline eBIRForms Package v7.9.1 which can be downloaded from www.bir.gov.ph and www.knowyourtaxes.ph.

2. Pay the taxes due thereon, if any, thru eFPS

After submitting the return thru eBIRForms, eFPS filers shall proceed to payment using the eFPS facility. They shall fill out and e-file BIR Form No. 0605 then proceed to e-payment to pay their income tax due and use the following codes:

- ▶ Tax Type Code - Income Tax (IT)
- ▶ Alphanumeric Tax Code (ATC) - MC 200 Miscellaneous Tax

RMC No. 75-2021 prescribes the standard policy and guidelines on the use of BIR Form No. 0605 for Excise Tax purposes, thereby amending RMC No. 97-2020.

RMC No. 75-2021 dated 2 March 2021

- ▶ Excise taxpayers making advance payment for export products availing the Product Replenishment Scheme pursuant to RR 3-2008 should tick the *Tax Deposit/Advance Payment* box under the Voluntary Payment of the Manner of Payment (Field No. 17) of BIR Form No. 0605.
- ▶ Excise taxpayers under the Non-Essential Services for Cosmetic Procedures should use BIR Form 2200-C.
- ▶ Excise taxpayers using BIR Form 0605 paying Deficiency Tax should tick the *Preliminary/Final Assessment/Deficiency Tax* box under the Per Audit/ Delinquent Account under Manner of Payment (Field No. 17) of BIR Form No. 0605.
- ▶ Payments for Administrative Penalties must tick the *Others (Specify)* box under the Voluntary Payment of the Manner of Payment (Field No. 17) of BIR Form No 0605 and indicate in the box provided *Administrative Penalties*.
- ▶ All other Excise Tax payments on domestic removals of excisable articles shall use their corresponding Excise Tax returns (BIR Form 2200 series).

Other BIR Issuances

RR No. 7-2021 implements the Provisions of Republic Act Nos. 11346 and 11467, Relative to the Excise Tax on Alcohol Products, Tobacco Products, Heated Tobacco Products, Vapor Products and Disposition of Excise Tax Collection.

RR No. 7-2021 dated 18 May 2021

Revised Rates and Bases of Excise Tax

▶ ALCOHOL PRODUCTS

1. DISTILLED SPIRITS

Excise Tax Due = Ad Valorem + Specific Tax		
Date of Effectivity (start date)	Ad valorem Tax [based on the net retail price per proof (excluding the excise and value-added taxes)]	Specific Tax (per proof liter)
1 January 2020	20%	P24.34
23 January 2020	22%	P42.00
1 January 2021	22%	P47.00
1 January 2022	22%	P52.00
1 January 2023	22%	P59.00
1 January 2024	22%	P66.00
2025 onwards	22%	specific tax rate shall be increased by 6% and every year thereafter

2. WINES

Date of Effectivity (start date)	Specific Tax (per liter)
1 January 2020 Sparkling wines/champagnes where the NRP (excluding the excise and VAT) per bottle of 750 ml volume capacity, regardless of proof is: a. Php 500 or less b. More than Php 500	P328.98 P921.15
Still wines and carbonated wines containing 14% of alcohol by volume or less	P39.48
Still wines and carbonated wines containing more than 14% of alcohol by volume but not more than 25% of alcohol by volume	P78.96
Fortified wines containing more than 25% of alcohol by volume	Taxed as distilled spirits
23 January 2020*	P50.00
1 January 2021	P53.00
1 January 2022	P56.18
1 January 2023	P59.55
1 January 2024	P63.12
2025 onwards	specific tax rate shall be increased by 6% and every year thereafter

(*Note: Beginning 23 January 2020, the classification of wines was removed pursuant to RA No. 11467. All types of wines are subject to specific excise tax rates per liter.)

3. FERMENTED LIQUORS

Date of Effectivity (start date)	Specific Tax (per liter)
1 January 2020	P26.43
23 January 2020	P35.00
1 January 2021	P37.00
1 January 2022	P39.00
1 January 2023	P41.00
1 January 2024	P43.00
2025 onwards	specific tax rate shall be increased by 6% and every year thereafter

▶ TOBACCO PRODUCTS, HEATED TOBACCO PRODUCTS, AND VAPOR PRODUCTS

1. Heated Tobacco Products

Date of Effectivity	Quantity	Excise Tax Rate
1 January 2020	Per pack of 20 units or any packaging combinations of not more than twenty units	P10.00
23 January 2020		P25.00
1 January 2021		P27.50
1 January 2022		P30.00
1 January 2023		P32.50
2024 onwards		specific tax rate shall be increased by 5% every year effective 1 January 2024

2. Vapor Products

Date of Effectivity	Quantity	Excise Tax Rate
1 January 2020 to 22 January 2020	0.00 ml to 10.00 ml	P10.00
	10.01 ml to 20.00 ml	P20.00
	20.01 ml to 30.00 ml	P30.00
	30.01 ml to 40.00 ml	P40.00
	40.01 ml to 50.00 ml	P50.00
	More than 50.00 ml	P50.00 plus P10.00 for every additional 10.00 ml

▶ Nicotine Salt or Salt Nicotine

Date of Effectivity	Quantity	Excise Tax Rate
23 January 2020	Per milliliter or a fraction thereof	P37.00
1 January 2021		P42.00
1 January 2022		P47.00
1 January 2023		P52.00
2024 onwards		rate shall be increased by 5% every year effective 1 January 2024

▶ Conventional 'Freebase' or 'Classic' Nicotine

Date of Effectivity	Quantity	Excise Tax Rate
23 January 2020	Per 10 milliliters or a fraction thereof	P45.00
1 January 2021		P50.00
1 January 2022		P55.00
1 January 2023		P60.00
2024 onwards		rate shall be increased by 5% every year effective 1 January 2024

The rates of tax imposed herein shall apply to **any liquid substance, regardless of nicotine content, including nicotine-free liquid or any similar product.**

3. Cigars and Cigarettes

- ▶ Cigars [Excise tax = ad valorem tax plus (+) specific tax]

Date of Effectivity	Ad valorem Tax	Add: Specific Tax
	Rate is based on the net retail price per cigar (excluding the excise and value-added taxes)	
1 January 2020	20%	P6.57
1 January 2021	20%	P6.83
1 January 2022	20%	P7.10
1 January 2023	20%	P7.38
2024 onwards	20%	rate shall be increased by 5% every year effective January 1, 2024

- ▶ Cigarettes packed by hand

Date of Effectivity	Quantity	Excise Tax Rate
1 January 2020	Per pack of 20s or any packaging combinations of not more than 20 packed by hands	P45.00
1 January 2021		P50.00
1 January 2022		P55.00
1 January 2023		P60.00
2024 onwards		rate shall be increased by 5% every year effective January 1, 2024

- ▶ Cigarettes packed by machine

Date of Effectivity	Quantity	Excise Tax Rate
1 January 2020	Per pack of 20s or any packaging combinations of not more than 20 packed by machine	P45.00
1 January 2021		P50.00
1 January 2022		P55.00
1 January 2023		P60.00
2024 onwards		rate shall be increased by 5% every year effective 1 January 2024

- ▶ Provisions on Tobacco Products, Heated Tobacco Products and Vapor Products
 - a. Label and Packages
 - b. Export and Transfer Bond
 - c. Transshipment
 - d. Inspection Fee
 - e. Information to be given by manufacturers, importers, indentors and wholesalers of any apparatus or mechanical contrivance specially for the manufacture of articles subject to excise tax and importers, indentors, manufacturers or sellers of cigarette paper in bobbins, cigarette tipping paper or cigarette filter tips
 - f. Floor Price or Minimum Price

- ▶ Common Provisions for Alcohol Products, Tobacco, Heated Tobacco, and Vapor Products
 - a. Tax Classification of Alcohol Products, Tobacco Products, Heated Tobacco Products and Vapor Products
 - b. Willful Understatement of Suggested Net Retail Price
 - c. Submissions of Sworn Statement of the Volume of Sales and Removals
 - d. Extent of Supervision Over Establishments Producing Taxable Output
 - e. Common Penalty Provisions
 - f. Statutory Offenses and Penalties
 - ▶ Unlawful possession of cigarette paper in bobbins or rolls, etc.
 - ▶ Violations committed by manufacturers, importers, indentors and wholesalers of any apparatus or mechanical contrivance specially for the manufacture of articles subject to excise tax and importers, indentors, manufacturers or sellers of cigarette paper in bobbins, cigarette tipping paper or cigarette filter tips.
 - ▶ Selling of Tobacco Products at a Price Lower than the Combined Excise and Value-Added Taxes.
 - ▶ Shipment or removal of liquor or tobacco products under false name or brand or as an imitation of any existing or otherwise known product name or brand relative to RA No. 11346.
 - ▶ Unlawful possession or removal of articles subject to excise tax without payment of the tax.

RR No. 8-2021 amends certain provisions of RR No. 4-2021 dated 8 April 2021, which implemented the VAT and Percentage Tax provisions of RA No. 11534 or the CREATE Act.

RR No. 8-2021 dated 11 June 2021

- ▶ Prior to 1 January 2021, the VAT-exempt threshold for sale of house and lot and other residential dwelling was P3,199,200. This was the result of the adjustment made in 2011 using the 2010 Consumer Price Index Values pursuant to RR No. 16-2011 dated 27 October 2011, and this became effective 1 January 2012 per RR No. 3-2012 dated 20 February 2012. The VAT-exempt threshold of P3,199,200 was applied and enjoyed by the taxpaying-public from 1 January 2012 up to 31 December 2020, or for 8 long years. As such, fairness and equity dictate that the **VAT-exempt threshold** under RA No. 10963, or the Tax Reform for Acceleration and Inclusion Law (TRAIN Law), of P2,000,000 **for sale of house and lot and other residential dwellings should also be adjusted to P3,199,200 beginning 1 January 2021.**
- ▶ With the intensified campaign of the Government to inoculate the population aimed at achieving herd immunity and to require the use of medical grade Personal Protective Equipment (PPE) components as a protection against COVID-19, there is a need **to facilitate the early release of the imported items** under Section 2, sub-section 4.109-1(B)(p)(bb), of RR No. 4-2021 from the Bureau of Customs (BOC).

- ▶ Excess percentage tax payments as a result of the decrease of tax rate from 3% to 1% starting 1 July 2020 until the effectivity of RR No. 4-2021 **may be carried forward to the succeeding taxable quarters**. This carry-over portion is intended for Percentage Taxpayers who are regularly filing the returns and are expected to have overpaid taxes as a result of the retroactive application of the CREATE. **Tax refund, however, is still allowed** in the event that the taxpayer shifted from non-VAT to VAT-registered status, or the taxpayer has opted to avail of the 8% income tax rate at the beginning of TY 2021.

RR No. 9-2021 amends certain provisions of RR No. 16-2005, as amended by RR No. 13-2018, as further amended by RR No. 26-2018 to implement the imposition of 12% VAT on the transactions covered under Section 106 (A)(2)(a) subparagraphs (3), (4) and (5), and Section 108 (B) subparagraphs (1) and (5) under the Tax Code, as Amended by the TRAIN Law.

RR No. 9-2021 dated 9 June 2021

Particulars	Details
<p>I. Transactions That Are Now Subject to 12% VAT</p>	<p>The conditions required under the proviso of Sections 106(A)(2)(a) and 108(B) of the Tax Code of 1997, as amended, have been fully satisfied, hence, in accordance thereto, the following transactions that were previously taxed at zero percent (0%) VAT shall now be subject to 12%:</p> <p>A. Those transactions considered as export sale under subparagraphs (3), (4), and (5) of Section 106(A)(2) of the Tax Code of 1997, as amended, to wit:</p> <ol style="list-style-type: none"> 1. Sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) [Sec. 106(A)(2)(a)(3)]; 2. Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production [Sec. 106(A)(2)(a)(4)]; and 3. Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws [Sec. 106(A)(2)(a)(5)]. <p>B. The sale of services and use or lease of properties under subparagraphs (1) and (5) of Section 108(B) of the Tax Code of 1997, as amended:</p> <ol style="list-style-type: none"> 1. Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) [Sec. 108(B)(1)]; and 2. Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of the total annual production [Sec. 108(B)(5)].

Particulars	Details
II. Amendments	<p>Subparagraphs of Sections 4.106-5 and 4.108-5 of RR No. 16-2005 as further amended by RR No. 13-2018 and RR No. 26-2018, are hereby renumbered and shall be read in the following order:</p> <p><i>“SEC. 4.106-5. Zero-Rated Sale of Goods or Properties. - xxx</i></p> <p><i>The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:</i></p> <p>(a) <i>Export sales - “Export Sales” shall mean:</i></p> <p>(1) <i>The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);</i></p> <p>(2) <i>The sale of goods, supplies, equipment, and fuel to persons engaged in international shipping or international air transport operations: Provided, That the goods, supplies, equipment, and fuel shall be used exclusively for international shipping or air transport operations.</i></p> <p><i>The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations is limited to goods, supplies, equipment and fuel that shall be used in the transport of goods and passengers from a port in the Philippines directly to a foreign port, or vice versa, without docking or stopping at any other port in the Philippines unless the docking or stopping at any other Philippine port is for the purpose of unloading passengers and/or cargoes that originated from abroad, or to load passengers and/or cargoes bound for abroad: Provided, further, that if any portion of such fuel, goods, supplies or equipment is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods, supplies, and equipment shall be subject to 12% VAT.</i></p> <p>(b) <i>Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.</i></p> <p><i>xxx xxx xxx” (italics supplied)</i></p> <p><i>“SEC. 4.108-5. Zero-Rated Sale of Services. -</i></p> <p><i>xxx xxx xxx</i></p> <p>(b) <i>Transactions Subject to Zero Percent (0%) VAT Rate. - The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:</i></p> <p>(1) <i>Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;</i></p> <p>(2) <i>Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;</i></p> <p>(3) <i>Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof: Provided, that these services shall be exclusively for international shipping or air transport operations. Thus, the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code.</i></p> <p>(4) <i>Transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country. Gross receipts of international air or shipping carriers doing business in the Philippines derived from transport of passengers and cargo from the Philippines to another country shall be exempt from VAT; however, they are still liable to a percentage tax of three percent (3%) based on their gross receipts derived from transport of cargo from the Philippines to another country as provided for in Sec. 118 of the Tax Code; and</i></p> <p>(5) <i>Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels: Provided, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.</i></p> <p><i>xxx xxx xxx” (italics ours)</i></p>

RMC 62-2021 clarifies certain provisions of RR No. 5-2021 relative to Corporate Income Taxation.

RMC 62-2021 issued on 17 May 2021

- ▶ To qualify for the reduced Corporate Income Tax rate of 20%, the total assets should not be more than P 100,000,000, exclusive of land. Total assets shall be net of depreciation and allowance for bad debts, if any. Further, 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, for purposes of determining if the corporation is qualified for the reduced Corporate Income Tax rate of 20%.
- ▶ The value of the land which shall be excluded in determining the total assets of the corporation is limited to that 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.
- ▶ In order to determine the value of the land that shall be excluded in the computation of total assets, the percentage of the floor area devoted to the entity's office shall be multiplied with the total value of the land.
- ▶ Private educational institutions distributing dividends to shareholders are taxable at the regular Corporate Income Tax rates of either 25% or 20%. 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 Act did not prescribe new tax treatment for proprietary educational institutions and private hospital 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 2020 to 30 June 2023 for such institutions which are non-profit.
- ▶ 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 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"*.

- ▶ The phrase "4th year of business operations" in the illustration specified in Section 9.B of RR No. 5-2021 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 Minimum Corporate Income Tax (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. The training is covered by an apprenticeship agreement under Presidential Decree (PD) No. 442 or the Labor Code of the Philippines; and
 4. 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.

RMC 67-2021 clarifies the issues related to the temporary reduction of Percentage Tax rate imposed under Section 116 of the NIRC of 1997, as amended by Section 13 of the CREATE Act.

RMC No. 67-2021 dated 24 May 2021

- ▶ The decrease of Percentage Tax rate from 3% to 1% effective 1 July 2020 until 30 June 2023 pursuant to Section 13 of R.A. No. 11534 applies to both corporate taxpayers and self-employed individuals and professionals whose gross sales or gross receipts are not exceeding the P3,000,000 threshold, except for cooperatives and self-employed individuals and professionals availing the 8% income tax rate.
- ▶ The coverage is as a whole under Section 116 of the Tax Code, which provides that any person whose sales or receipts are exempt under Section 109(1) (CC) of the Tax Code from the payment of VAT and who is not a VAT-registered person shall be subject to percentage tax, provided, that the taxpayer did not opt to be VAT-registered even if the P3 000,000 threshold was not breached.

The reduced rate of 1% for percentage tax prescribed under Sec. 116 is imposed on transactions or activities which are neither specifically exempt under Sec. 109 of the Tax Code nor are subject to VAT because they have not reached the three million pesos VAT threshold as provided for under Sec. 109(1)(CC) of the same Code.

- ▶ Taxpayers who filed their 3rd and 4th quarter Percentage Tax returns for 2020 and those who may have filed their 1st quarter percentage tax returns for 2021 using the 3% rate are required to amend their duly filed Percentage Tax returns using the 1% rate to reflect the overpaid taxes.

Amendment of the Percentage Tax returns is not subject to penalty for affected taxpayers which/who will carry over the overpaid percentage taxes.

- ▶ The carry-over is intended for Percentage Taxpayers who are regularly filing the returns and are expected to have overpaid taxes as a result of the retroactive application of CREATE starting July 1, 2020. The transitory provisions in RR No. 4-2021 allows flexibility to affected taxpayers by allowing them to carry over the overpaid taxes in order for taxpayers to utilize the overpaid amount against future percentage tax liabilities.
- ▶ Percentage taxpayers who have overpaid taxes as a result of the decrease of tax rate from 3% to 1% starting 1 July 2020 until the effectivity of RR No. 4-2021 are allowed for a tax refund in the event that:
 1. The taxpayer shifted from non-VAT to VAT-registered status, or
 2. The taxpayer has opted to avail the 8% income tax rate at the beginning of TY 2021
- ▶ In the current Percentage Tax Return (BIR Form No. 2551Q), the only option reflected in the said form is for refund or issuance of tax credit certificate (TCC). The percentage taxpayer who shall carry-over the overpaid amount should observe the following guidelines:
 1. For taxpayers filing BIR Form No. 2551Q manually, neither of the options "To be Refunded" or "To be Issued a Tax Credit Certificate" shall be marked in the said tax return but rather write the phrase "To be Carried Over" on the return, or
 2. For eFPS and eBIRForms filers, the option "To be Issued Tax Credit Certificate" shall be marked as a workaround procedure to proceed with the electronic filing. For purposes of the transitory provisions in Section 3 of RR No. 4-2021, it is presumed that the taxpayer will carry over the overpaid tax to the succeeding taxable quarter once the said option was chosen. However, if the taxpayer intends in having the overpaid tax to be refunded or issued with TCC for any of the reason stated in Q&A No. 6, the BIR shall be informed thru BIR Form No. 1914 or the "Application for Tax Credits/Refunds" by indicating therein that it shall be in the form of refund or TCC.

The same procedure shall be undertaken, whether the return was filed manually or electronically, by the percentage taxpayer until the overpaid amount has been fully utilized.

- ▶ If the percentage taxpayer will carry over the overpayment but has inadvertently marked either tax refund or issuance of TCC on the return, the Bureau will presume that the overpaid amount will be carried over. Once the overpayment has been carried forward, the option initially chosen shall automatically be superseded.
- ▶ The amended Percentage Tax returns showing the overpayment shall be the basis for the carry over.
- ▶ If the whole amount of 3% percentage tax has been claimed as deductible expense for purposes of computing the income tax due, the taxpayer can no longer be allowed as carry over or apply for tax refund/TCC the alleged overpaid percentage tax.
- ▶ Only the ITR/s filed are needed to be amended without necessarily amending the corresponding AFS. However, if the AFS will not be amended, the overpaid percentage tax shall be reflected as a reconciling item in the amended ITR/s.

RMC No. 76-2021 clarifies the illustrative examples on how the income tax of corporation shall be computed.

RMC No. 76-2021 issued on 11 June 2021

- ▶ The Circular is issued to amend the illustration under Section 3(B) and 3(D) of RR No. 5-2021 for Proprietary Educational Institutions and Regional Operating Headquarters (ROHQs) on the income tax due and the gross income which were inadvertently written to be in the amount of P1,000,000 and P558,500,000 instead of the correct amount of P100,000 and P58,500,000, respectively.
- ▶ Proprietary Educational Institutions

	Related Activities	Unrelated Activities	Total
Gross Receipts/ Sales	10,000,000.00	8,000,000.00	18,000,000.00
Less: Cost of Services/Sales	2,000,000.00	3,000,000.00	5,000,000.00
Gross Income	8,000,000.00	5,000,000.00	13,000,000.00
Less: Allowable Deductions	1,000,000.00	2,000,000.00	3,000,000.00
NET TAXABLE INCOME	7,000,000.00	3,000,000.00	10,000,000.00
REGULAR RATE			1%
TAX DUE			100,000.00

- ▶ Regional Operating Headquarters

	TY2020	TY2021	TY2022	TY2023
Annual Income	75,000,000	120,000,000	130,000,000	75,000,000
Cost of Services	41,250,000	66,000,000	71,500,000	41,250,000
Gross Income	33,750,000	54,000,000	58,500,000	33,750,000
Allowable Deductions	33,625,000	41,200,000	42,550,000	35,125,000
	125,000	12,800,000	15,950,000	(1,375,000)
Computation of Income Tax Due				
Net Taxable Income/ Gross Income	125,000	12,800,000	15,950,000	(1,375,000)
Multiply by	10%	10%	25%	25%
Income Tax Due	12,500	1,280,000	3,987,500	0.00
MCIT:	N/A	N/A		
Gross Income			58,500,000	33,750,000
MCIT Rate			1%	1.5%*
MCIT			585,000	506,250
Income Tax Due			P3,987,500	P506,250

- ▶ The Circular likewise clarifies that the 1% income tax rate for proprietary educational institutions and the 1% Minimum Corporate Income Tax (MCIT) for ROHQs shall be imposed only for the period 1 July 2020 until 30 June 2023, and 1 January 2022 to 30 June 2023, respectively. Thus, beginning 1 July 2023, the income tax rate for proprietary educational institutions and the MCIT shall revert to 10% and 2%, respectively.

RMC No. 77-2021 addresses the frequently asked questions regarding the availment of treaty benefits and clarify certain provisions of RMO No. 14-2021.

RMC No. 77-2021 dated 15 June 2021

Some of the salient Q&As are as follows:

- ▶ Who may avail of treaty benefits?

Only persons, natural or juridical, who are residents of one or both of the Contracting States may avail of treaty benefits. To establish the fact of residency in a contracting state, the non-resident income recipient should submit a Tax Residency Certificate (TRC) duly issued by the tax authority of the country of residence.

- ▶ In a situation where the non-resident claims that it is entitled to the benefits provided under the treaty but fails to submit a TRC, what is the effect of such failure?

The Double Taxation Conventions or tax treaties contain a standard provision that "the Convention shall apply to persons who are residents of one or both of the Contracting States." In other words, the intention of the tax treaties is to limit or restrict the granting of its benefits to those who are entitled thereto, i.e., the residents of the contracting states only. The benefit of a tax treaty does not extend to a taxpayer who fails to prove his/her/its residency in either or both of the contracting states.

The best proof of residency is the TRC duly issued by the competent authority of the treaty partner. Failure to submit the same would result in the denial of the nonresident's claim.

- ▶ In withholding taxes, what treaty rate should be applied by the income payor on the income of the nonresident alien not engaged in trade or business or non-resident foreign corporation (hereinafter referred to as "non-resident")?

If the non-resident submitted to the income payor a TRC and the appropriate BIR Form No. 0901 prior to the payment of income, the income payor may apply the provisions of the applicable treaty; provided that all the conditions for the availment thereof, other than residency, have been satisfied. Otherwise, the regular rates imposed under the Tax Code should be applied.

- ▶ Paragraph 2, Section 4 of RMO No. 14-2021 states that the withholding agent shall file a request for confirmation (RFC) on the propriety of the withholding tax rates applied on that item of income. If the non-resident's income was not subjected to tax in the Philippines in accordance with the relevant tax treaty, does the withholding agent have to file an RFC?

Yes. The withholding agent is required to file a request for confirmation.

- ▶ When and how should the request for confirmation be filed?

Depending on the type of income, the request for confirmation with complete documentary requirements shall be filed by the withholding agent, domestic or foreign, on or before the dates prescribed below:

Type of Income	Date of Filing
Capital gains	At any time after the transaction but shall not be later than the last day of the fourth month following the close of the taxable year when the income is paid or when the transaction is consummated.
Other types of income	At any time after the close of the taxable year but not later than the last day of the fourth month following the close of such taxable year when the income is paid or becomes payable, or when the expense/asset is accrued or recorded in the books, whichever comes first.

- ▶ Does the non-resident have to re-submit a TRC each time an income is earned within the same taxable year?

One original and authenticated TRC shall be submitted to each income payor per year. In the alternative, a certified true copy of the original may be submitted to other payors of income if the original copy is no longer available, with a notation as to whom the original copy was previously submitted.

The same rule applies to the proof of establishment or incorporation, Certificate of Non-registration or License to Do Business in the Philippines duly issued by the Securities and Exchange Commission, and Certificate of Business Registration/Presence duly issued by the Department of Trade and industry.

- ▶ If the treaty rate was not applied on an item of income, what is the remedy of the non-resident?

The non-resident, or its authorized representative, should file a TTRA with complete documentary requirements and a claim for refund at any time after the payment of the withholding tax if the regular rate under the Tax Code was applied on the income instead of the treaty rates.

- ▶ Is the annual updating for long-term contracts mandatory?

For long-term contracts involving the payment of interests and royalties and other types of income where the condition for entitlement to treaty benefits is not dependent on time threshold, the annual updating is not mandatory. In this case, the BIR will issue a one-time certification that is presumably valid for the whole duration of the contract so long as there is no relevant and significant change in the facts or circumstances upon which the ruling was based (e.g., change in the country of residence, the recipient of the income or the beneficial owner of the income, or the legal basis).

It shall be the duty of the withholding agent to ensure that the non-resident continues to be a resident of the same country for the whole duration of the contract, and for this purpose, it may require the submission of TRC at the beginning of each year. If there would be material changes in the facts or circumstances upon which the previous ruling was based in the succeeding year, a request for confirmation shall again be filed by the withholding agent.

During audit, the withholding agent shall be required by the tax auditor to prove that the facts and circumstances did not change at any time after the issuance of the Certificate of Entitlement to Treaty Benefit (COE).

On the other hand, in the case of long-term contract of services where the existence of a PE in the Philippines is dependent on time threshold (e.g., days of physical presence of the non-resident company's employees in the Philippines within a twelve-month period or calendar year or taxable year), the annual updating is mandatory. For contract of services, the COE shall be limited to a particular period of engagement.

- ▶ Will there be an automatic denial for failure to file the RFC within the prescribed period?

No, there will be no automatic denial for failure of the filer to file within the prescribed period. Denials will purely be based on the merits of the case, i.e., whether or not the non-resident has established and proved his/her/its entitlement to treaty benefit. However, the penalty for late filing shall be imposed (Section 13 of RMO No. 14-2021).

- ▶ When the application is approved, what will the BIR issue to confirm the non-resident's entitlement to treaty benefit?

If the RFC or TTRA is approved, the BIR will issue a COE instead of the usual BIR Ruling. The COE will still contain the material facts of the case and a ruling confirming the non-resident's entitlement to treaty benefit.

For TTRAs relating to interests, dividends, and royalties, which were filed prior to the effectivity of RMO No. 8-2017, the BIR may still issue a Compliance Check Report to be consistent with the manner of approving similar applications prior to the effectivity of the new RMO.

Bureau of Customs

Clearance of Goods Under the Informal Entry Process

CAO No. 02-2021 dated 18 May 2021

- ▶ List of shipments which shall be cleared through Informal Entry Process:
 1. Goods of Commercial Nature with Free on Board (FOB) or Free Carrier (FCA) value of less than P50,000;
 2. Personal and household effects or goods, not in commercial quantity, whether or not subject to duties and/or taxes;
 3. Conditionally Tax and/or Duty-Exempt Importations under Section 800 of the Customs Modernization and Tariff Act (CMTA):
 - ▶ Importation by Returning Residents and OFWs as embodied separately in CAO No. 06-2016;
 - ▶ Balikbayan Boxes sent to families or relatives by Qualified Filipinos While Abroad and consolidated shipment of duty and tax-free Balikbayan boxes as embodied separately in CAO No. 1-2018;

CAO No. 2-2021 applies to all importations cleared through the Informal Entry Process whether or not subject to payment of duties and taxes except accompanied baggage. On the other hand, De Minimis importations and relief consignments shall be covered by their respective regulations.

- ▶ Shipment containing wearing apparel, goods of personal adornment, toiletries, portable tools and instruments, theatrical costumes and similar effects accompanying travelers, or tourists, or arriving within a reasonable time before or after their arrival in the Philippines, which are necessary to the wear and use of such persons according to the nature of the journey, their comfort and convenience;
 - ▶ Shipments containing Personal and household effects belonging to foreign consultants and experts hired by, or rendering service to, the government, and their staff or personnel and families accompanying or arriving within a reasonable time before or after their arrival in the Philippines, in quantities and of the kind necessary and suitable to the profession, rank or position of the person importing said items, for their own use, and not for barter, sale or hire;
 - ▶ Shipments containing professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effect belonging to persons coming to settle in the Philippines or Filipinos or their families and descendants who are now residents or citizens of other countries, such parties hereinafter referred to as overseas Filipinos;
 - ▶ Shipments containing Importations for the personal and family use of members and attaches of foreign embassies, legations, consular officers and other representatives of foreign governments and for official use;
 - ▶ Coffins or urns containing human remains, bones or ashes, used personal and household effects (not merchandise) of the deceased person, except vehicles, the FCA or FOB value of which does not exceed P150,000;
 - ▶ Shipments containing personal and household effects of any officer or employee of the DFA, including any attaché, civil or military or member of the staff assigned to a Philippine diplomatic mission abroad by the Department or any similar officer or employee of other departments assigned to any Philippine consular office abroad, or any AFP military personnel accorded assimilated diplomatic rank or on duty abroad who is returning from a regular assignment abroad, for reassignment to the home office, or who dies, resigns, or is retired from the service;
4. Those falling under the remaining sub-paragraphs of Sec. 800 of CMTA, Conditionally Tax and/or Duty-Exempt Importations shall fall under Informal Entry Process provided that its FOB or FCA value as determined by the Bureau of Customs (BOC) is less than P50,000;
 5. Clearance of previously imported diplomatic supplies and equipment of foreign embassies and tax-exempt institutions sold to a non-privileged buyer shall be manually processed under the Informal Entry Division.
- ▶ Importation of motor vehicles, motorcycles and motor scooters regardless of the consignees, including those under Section 800 of the CMTA, shall be under the Formal Entry Process.
 - ▶ CAO No. 02-2021 shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of general circulation.

(Editor's Note: CAO No. 02-2021 was published on 19 June 2021 in The Manila Times, p. B6)

Guidelines for the Implementation of the General Warehousing Bond (GWB) thru the Automated Bonds Management System (ABMS)

CMO No. 17-2021 applies to all Warehousing Bond Accounts opened under the Electronic to Mobile (E2M) Customs System in all Collection Districts, including sub-ports and other BOC offices.

CMO No. 17-2021 18 dated May 2021

▶ Administrative Provisions:

1. Warehousing bond accounts shall be covered under the ABMS.
2. Only CBW operators registered with the Client Profile Registration System (CPRS) shall be allowed to avail of the ABMS in the E2M Customs System.
3. Approved bond policies filed on the current year will expire on the 31st day of December of the calendar year.
4. The GWB shall be exclusively used to secure the duties and taxes reflected in the Warehousing Single Administrative Document (WSAD). The CBW operator must open a bond account for the transit of the goods from the Port of Discharge to the CBW.

▶ Operational Provisions:

1. *Creation of a Bond Account*

- ▶ The CBW operator shall create a bond account by submitting the bond policy electronically to the BOC through its accredited VASP.
- ▶ The E2M Customs System shall automatically send a "STORED" or "REJECT" feedback or status.
- ▶ The applicant shall submit the hard copy of the bond policy, together with the supporting documents, to the Bonds Division of the Port having jurisdiction over the CBW through the Port's Customer Care Portal System (CCPS).
- ▶ The Bonds Examiner checks the bond application and tags the same as "EXAMINED" or "EXAMINED FAILED".

Examine Failed means the application is rejected and the original bond policy together with the supporting documents shall be returned to the importer or his authorized representative.

However, if the discrepancy or error is only on the details in the ABMS, the Bonds examiner need not return the original bond to the applicant. The CBW operator shall rectify by relodgement of correct information in the VASP system.

- ▶ The Bonds Division Chief shall review the findings of the bonds examiner then tags the application as "APPROVED" or "REJECTED"
- ▶ Approved bonds automatically generate the following ABMS:
 - a. Bond Account containing the Account Holder and Account Information
 - b. Account Policies containing Policy Details

c. Bond Charging/Cancellation History in ledger form

- ▶ A CBW operator can add more bond policies to his account by following the same procedure during the first bond application.

2. *Bonds Charging*

- ▶ Upon lodgement of the goods declaration for warehousing, the Warehousing Entry System (WES) sends request to the ABMS to charge against a particular bond account. The ABMS checks for the sufficiency of the bond.
 - a. If the bond is insufficient, a bond error message is displayed in the E2M Customs System to the principal appraiser and the assessment cannot proceed
 - b. If the bond is sufficient, the WES debits the amount charged to the available bond balance. The SAD Assessment Notice is the notification that the assessed duties and taxes is charged against the bond.
- ▶ If the goods declaration is cancelled, the ABMS cancels the amount charged and reverts to the previous bond balance.

3. *Bond Cancellation*

The Chief Bonds Division may cancel an approved bond if there are still errors or discrepancies, provided that the same has not been charged against goods declaration. Upon liquidation of the warehousing goods declaration, cancellation of bonds shall be covered by a separate Raw Materials Liquidation System (RMLS).

- ▶ CMO No. 17-2021 applies to all Warehousing Bond Accounts opened under the Electronic to Mobile (E2M) Customs System in all Collection Districts, including sub-ports and other BOC offices.
- ▶ CMO No. 17-2021 shall take effect 5 days after publication in a newspaper of general circulation.

(Editor's Note: CMO No. 17-2021 was published on 10 June 2021 in Manila Bulletin, p. 2)

Revised Rules and Regulations on the Opening and Utilization of Prepayment Accounts

CMO No. 18-2021 dated May 19, 2021

- ▶ General Provisions
 1. Any accredited importer or exporter is given an option to open prepayment accounts as an alternative to the Payment Application Secure System Version 5.0 (PASS5) system required to be used by all E2M users.

CMO No. 18-2021 is issued to provide an alternative mode of payment of duties, taxes and other charges for all goods declarations lodged through the E2M. It covers goods for consumption (formal), transit, warehousing, export, informal entry, and transshipment.

2. The importer or exporter may open and maintain one or more prepayment accounts in any Collection District from which he/she will specify where payment should be made on a per-transaction basis.
3. The following stakeholders can open prepayment accounts for their respective goods declaration:

Type of Entry	Stakeholders
Consumption (Formal)	Accredited Importer
Transit (including shipments from local ports to free zones)	Accredited Importer
Warehousing	Accredited Importer
Export	Accredited Importer
Informal Entry	Small Value Importer and Air Express Cargo Operators

- ▶ Funds in any prepayment account cannot be withdrawn but they can be transferred from one prepayment account to another prepayment account which is also under the same holder's name.
- ▶ Any importer or exporter can check the balance in his prepayment account by inquiring at the Management Information System and Technology Group (MISTG)-Site Team through the Customer Care Portal System (CCPS) or any other secured BOC prepayment online query by providing the prepayment account number and transaction dates or period covered.
- ▶ CMO No. 18-2021 shall take effect on 24 May 2021.

Implementation of the Automated Inventory Management Systems (AIMS) by All Registered Customs Bonded Warehouses

CMO No. 20-2021 dated 28 May 2021

- ▶ Administrative Provisions:
 1. All CBWs granted License to Operate by the BOC shall implement the AIMS of the service provided accredited by the BOC.
 2. The CBW operator or its duly authorized representative must upload the latest inventory a day prior to the implementation/roll-out of the AIMS.
 3. The CBW operator or its duly authorized representative shall upload in the AIMS all documents or attachments required by the BOC in PDF format.
 4. The AIMS withdrawal system is based on a first-in first-out (FIFO) scheme.

CMO No. 20-2021 provides the guidelines in the operations and use of AIMS for imported raw materials entered into registered CBWs, regardless of type or classification.

- ▶ The AIMS Service Provider shall charge a transaction fee of Php160 exclusive of VAT for every lodgment of the following declarations in the AIMS:

No.	Process/Procedure Declaration	Type of Declaration/Transaction
1	Entry Declaration (Direct Import and Constructive Import (Raw Materials)	Entry/Arrival
2	Withdraw - Manufacture Declaration	Withdrawal Declaration
3	Toll Manufacturing Declaration Release or Return	Transfer Declaration
4	Transfer Declaration from Mother Warehouse to Member	Transfer Declaration
5	Entry Declaration (Finished Goods) within the CBW or Arrival from Sub-contractor	Entry/Arrival
6	Exit Declaration	Export
7	Withdraw - Local Sales Declaration (Raw Materials, Semi-Finished, or Finished Goods)	Withdrawal
8	Write off Declaration	Write off
9	Constructive Export	Constructive exportation
10	Filing of Liquidation in the AIMS	Liquidation

- ▶ If the value of the shipment is less than Ph50,000, the CBW operator/accredited member of CCBW shall only pay for the creation of the entry declaration in the AIMS and the filing of liquidation thereof.
- ▶ Declarations made by accredited Sub-contractor in the AIMS shall not be subject to any charges.
- ▶ Generation from the AIMS of any other type of reports shall not be subject to any charges.
- ▶ The BOC shall not collect any fees on behalf of the AIMS Service Provider but it shall collect from the Service Provider a service fee for monitoring and supervision of AIMS equivalent to 10% of the fees collected exclusive of VAT in accordance with the published rate for the use of the AIMS.
- ▶ For purposes of customs procedures, electronic data coming from the AIMS Service Provider shall be acceptable and shall have legal effect, validity or enforceability as any other document or legal writing.
- ▶ CMO No. 20-2021 shall take effect on 1 July 2021.

Implementing Guidelines in the Admission, Movement and Withdrawal of Goods in the New Clark City (NCC)

CMC No. 103-2021 circularized JMO No. 01-2021 providing the procedure in the admission, movement and withdrawal of goods in the NCC.

CMC No. 103-2021 11 dated May 2021

- ▶ Admission of Goods into NCC - imported goods shall be admitted when the Goods Declaration for Admission, together with all documents as may be required by existing laws and regulations, are electronically lodged simultaneously with the BOC and NCC at the time of Admission.
- ▶ Movement of goods
 1. Within the NCC - prior coordination from the BOC shall be secured by the NCC Locator.
 2. From the NCC to another Free Zone - shall be covered by the necessary Transit Permit.
 3. From Customs Territory to NCC - shall undergo non-intrusive inspection at the Port of Discharge. If the shipment is the subject of derogatory information, physical inspection shall be conducted at the NCC Clearance Area.
 4. Transfer of goods to NCC shall be subject to the provisions of CMO No. 4-2020 on the implementation of the electronic transfer of containerized cargoes.
- ▶ Withdrawal of Goods from NCC for Consumption in the Customs Territory - shall be covered by a Goods Declaration for Consumption which shall be lodged with the BOC together with the copy of previously lodged Goods Declaration for Admission and other required documents pursuant to existing laws and regulations.

(Editor's Note: CMC No. 103-2021 was published on 10 June 2021 in Manila Bulletin, p. 5)

Lower Rates of Import Duty on Rice pursuant to EO No. 135 (series of 2021)

CMC No. 108-2021 imposed lower MFN tariff rates on rice imports in view of the effectivity of EO No. 135 (series of 2021).

CMC No. 108-2021 dated 1 June 2021

- ▶ Reduced rates from 40% (In-Quota) and 50% (Out-Quota) to 35% for a period of 1 year
- ▶ The BOC's E2M System is required to reflect the temporary MFN rates of duty pursuant to the subject EO.
- ▶ CMC No. 108-2021 shall take effect immediately.

Procedural Codes Created in the E2M System relative to the Implementation of CREATE Act

With reference to BIR RR No. 4-2021 on the effectivity of the CREATE Act, new procedural codes have been created.

CMC No. 114-2021 dated 7 June 7, 2021

Procedural Code	Description	Per Revenue Regulation
ON5	Section 109 (AA)(i-ii) RA 11534 of National Internal Revenue Code of 1998, as amended (NIRC) VAT Exempt	Prescription drugs and medicine for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, and kidney diseases
ON6	Section 109 (BB)(i) RA 11534 of NIRC VAT Exempt	Capital equipment, its spare parts, and raw materials, necessary for the production of personal protective equipment (PPE) components such as coverall, gown, surgical mask, n-95 mask, scrub suits, goggles and face shields, double or surgical gloves, dedicated shoes, and shoe covers, for COVID-19 prevention
ON7	Section 109 (BB)(ii) RA 11534 of NIRC VAT Exempt	All drugs, vaccine and medical devices specifically prescribed and directly used for the treatment of COVID-19
ON8	Section 109 (BB)(iii) RA 11534 of NIRC VAT Exempt	Drugs for the treatment of COVID-19 approved by the Food and Drug Administration (FDA) for use in clinical trials, including raw materials directly necessary for the production of such drugs
N34	Section 109 (R)(iii) RA 11534 of NIRC VAT Exempt	Books, newspaper, magazine, journal, review bulletin, or any educational reading materials covered by the United Nations Educational, Scientific, and Cultural Organization (UNESCO)

CMC No. 122-2021 announces the reiteration by the EMB of DENR that used, or waste shredded/cut rubber tires is not listed in the allowable recyclable materials in DAO No. 2013-22 of the Revised Procedures for the Management of Hazardous Wastes. Accordingly, importation of the above-mentioned product is not allowed.

Reiteration of Department of Environment and Natural Resources (DENR) Administrative Order (DAO) No. 2013-22 on Importation of Used of Waste Shredded/Cut Rubber Tires

CMC No. 122-2021 dated 14 June 2021

The new Certificate of Origin Form D is already available at the CCC. In this regard, all exporters are hereby advised to use the said CO Form D starting June 16, 2021 for processing of their export goods within AMS given that the old CO Form D will no longer be accepted by AMS starting 1 August 2021.

Effectivity of the New Certificate of Origin Form D

AOCG Memo No. 292-2021 dated 16 June 2021

Banks and Other Financial Institutions

Guidelines on the Management of Liquidity Risk by Islamic Banks and Islamic Banking Units

Circular No. 1116 provides guidelines on the management of liquidity risks by Islamic Banks and Islamic Banking Units.

Circular No. 1116 dated 25 May 2021

GUIDELINES ON LIQUIDITY RISK MANAGEMENT

The IBs/IBUs are expected to have written policies on liquidity risk management. For the IBUs, their assets and liabilities are segregated from those of the conventional bank proper, thus IBUs are expected to establish their separate liquidity management arrangements. In applying the provisions of this Appendix, the IBs/IBUs shall consider the following:

- ▶ Specific liquidity characteristics of the Shari'ah-compliant instruments that are available in the market
- ▶ In developing a funding strategy and a contingency funding plan, IBs/IBUs should consult their Shari'ah Advisory Council (SAC)¹. Any instrument to be used in liquidity management should be acceptable to the SAC and is appropriate to the context in which it is to be used.
- ▶ IBs/IBUs should also assess the liquidity risk arising from the various modes of Shari'ah-compliant financing that they employ, including any risk transformation that may take place at different stages thereof.
- ▶ IBs/IBUs should consider Shari'ah limitations, if any, on the ways in which liquidity can be transferred between entities in a banking group, or between the IBOS and the bank proper, including the instruments that can be used for this purpose.

The Basel III Framework on Liquidity Standards-Liquidity Coverage Ratio and guidelines on the implementation of the Net Stable Funding Ratio (NSFR) are included in Appendix 72 and Appendix 130, respectively.

Implementation

The minimum LCR and NSFR will be implemented following the timelines set out below:

Observation Period	LCR and NSFR of 100%
Upon effectivity of this Circular until 31 December 2024	01 January 2025 and thereafter

Requirement during the observation period.

- ▶ For monitoring purposes, the 1B shall submit within 30 banking days from end of the reference quarter, LCR and NSFR reports in a single currency.
- ▶ With regard to IBIJ, the conventional bank proper shall not consolidate the IBU activities in its bank-wide LCR and NSFR reports during the observation period. Instead, the IBU shall submit separate LCR and NSFR reports in a single currency within 30 banking days from end of the reference quarter. The submission of the LCR and NSFR reports shall be subject to the governance

process on the quality of bank reporting under Section 171 of the MORB. Any non-compliance with reporting standards, or non-submission or delayed submission of such reports shall be subject to the monetary and non-monetary sanctions under Section 171 of the MORB.

- ▶ While no interim target level shall be required during the observation period, the supervising department, as part of effective monitoring is expected to engage the IB/IBU on its degree of compliance with the LCR and NSFR. Moreover, there will be continuous dialogue/discussion with industry players to assess readiness for the strict implementation of the Circular.

Implementation of RA No. 11523, otherwise known as the Financial Institutions Strategic Transfer (FIST) Act

Circular No. 1117 dated 27 May 2021

Sale/transfer transactions of NPAs by BSFIs for purposes of availing of the tax exemptions and incentives/privileges under the FIST Act shall comply with the provisions below.

Issuance of Certificate of Eligibility (COE)

COE refers to the certificate issued by the BSP as to the eligibility of the non-performing loan (NPL) or real and other properties acquired (ROPA) for purposes of availing the tax exemptions and privileges pursuant to the provisions of the FIST Act.

A BSFI which intends to avail of the tax exemptions and fee privileges under the FIST Act shall apply for a COE in accordance with the Bangko Sentral's guidelines for obtaining a COE under the FIST Act. The following transactions shall require a COE:

- ▶ The sale/transfer of NPAs by a BSA to a FISTC;
- ▶ The dation in payment (*dacion en pago*) of NPL by a borrower or third party on behalf of the borrower to a BSFI; and
- ▶ The sale/transfer of NPL (secured by a real estate mortgage on a residential unit or an empty lot) or ROPA (single family residential unit or an empty lot) by a BSFI to an individual: Provided, That an individual is limited to only one acquisition of NPA (either NPL or ROPA).

Notice, Manner and Nature of Sale/Transfer of NPAs

- ▶ **Prior Notice.** The BSFI's notification to the borrower shall include a written breakdown of his/her loan and related credit obligations that shall be the subject of the sale/transfer.

Circular No. 1117 sets forth the guidelines governing the sale/transfer and investment transactions of banks, and other institutions licensed by the BSP.

The notice shall be made in accordance with the 2019 Revised Rules of Civil Procedure, including Rule 13, Sections 5-15 and 17 on the modes and proof of service, and Rule 14. Section 12 on the service upon domestic private juridical entity.

▶ **Sale/Transfer of Assets**

A selling BSFI shall provide prospective bidders with a data package that includes:

1. For NPLs:

- ▶ Promissory Note/Pawn ticket;
- ▶ Restructuring Agreement, debt settlement agreement and other loan agreements of similar nature; and
- ▶ Chattel Mortgage and Security Agreement, third-party financial guarantee or surety arrangement.

2. For ROPA:

- ▶ Proof of property's ownership, e.g., Transfer Certificate of Title (TCT), with registered real estate mortgage (REM), tax declaration for unregistered land, Certificate of Stocks or other certificate/proof of participation in securities, Official Receipt/certificate of Registration for motor vehicle;
- ▶ Certificate of Sale (COS) for Extra-judicial foreclosure /Notarized Deed of Dacion in case of dation in payment/judgment in case of judicial foreclosure for real estate ROPA with unconsolidated land title; and
- ▶ Latest Real Estate Tax Receipt.

3. For SCRs:

- ▶ Notarized Sales Contract;
- ▶ Proof of property's ownership, e.g., TCT, with REM, tax declaration for unregistered land, Certificate of Stocks or other certificate/proof of participation in securities, Official Receipt/Certificate of Registration for motor vehicle;
- ▶ COS for Extra-judicial foreclosure /Notarized Deed of Dacion in case of dation in payment/judgment in case of judicial foreclosure for real estate ROPA with unconsolidated land title; and
- ▶ Latest Real Estate Tax Receipt.

▶ **Subsequent notice.**

Within 15 banking/business days after the execution of the NPL's sale or transfer documents, the transferring BSFI shall inform the borrower, in writing sent to the latter's last known address or email address, of the fact of the sale or transfer of the NPLs.

▶ **Subsequent transfers.**

The re-acquisition of the NPA by the borrower or owner from the FISTC, individual, or subsequent transferee other than by the exercise of the right of redemption as provided for in Section 20 of the FIST Act and Rule 20 of the IRR shall be in accordance with the terms and conditions as may be agreed upon by them.

Investment Transactions of a BSFI.

A BSFI may subscribe to, acquire or hold Investment Unit Instruments (IUIs) issued by a FISTC in accordance with Section 11 of the FIST Act, Rule 11 of the IRR and other applicable BSP rules and regulations subject to these conditions:

1. a transferor-BSFI cannot acquire the IUIs of the transferee-FISTC.
2. the parent, subsidiaries, affiliates or stockholders, directors, officers, or any related interest of the selling BSFI or the parent's subsidiaries, affiliates or stockholders, directors, officers, or any related interest shall not acquire or hold, directly or indirectly, the IUIs of the FISTC that acquired the NPAs of the BSA.

Prudential Relief Measures on the Sale/Transfer of NPAs

BSFIs may avail of the prudential relief measures that shall be granted by the Bangko Sentral in relation to their NPA sale/transfer transactions.

Limitations on Amount Available for Dividends

BSFIs may carry-over any loss incurred as a result of the transfer of an NPA within a period of not more than two-years from the date of effectivity of the FIST Act for a period of five consecutive taxable years immediately following the year of the transfer that resulted in such loss if the loss meets the requirements under Section 17 of the FIST Act and Rule 17.1 of the IRR and the tax savings derived by a BSFI from this net operating loss carry-over shall not be made available for dividend declaration under Sec. 124/123-Q but shall be retained as a form of capital build-up pursuant to Section 17 of the FIST Act and Rule 17.2 of the IRR.

Prudential Report

BSFIs that avail of the tax exemptions and incentives/privileges under the FIST Act shall submit a Monthly Report on the Sale/Transfer and Investment Transactions of BSFIs under the FIST Act to the Bangko Sentral.

Penalties and Administrative Sanctions

A BSFI and/or its concerned directors, officers, and employees who violate any provision of the FIST Act, its IRR, and this Circular, or who, in a notice or certification, makes any untruthful statement of a material fact or omits to state a material fact, or who violate the required "true sale" nature of the sale/transfer of NPAs shall be penalized.

Memorandum No. M-2021-032: Guidelines on Disclosure and Transparency of Remittance and Transfer Companies and their Remittance Sub-Agents

Memorandum No. M-2021-032 provides guidelines to all remittance and transfer companies pursuant to Section 901-N of the MORNBF, as amended by BSP Circular No. 1039 dated 03 May 2019, that a RTC may accredit its own RSA.

Memorandum No. M-2021-032 dated 28 May 2021

Under Memorandum No. M-2021-032, RTC may now accredit its own RSA:

- ▶ The RTC shall consider the accredited RSA as part of its network and shall be responsible for its compliance with laws, rules and regulations on anti-money laundering/combating the financing of terrorism, customer data security and confidentiality, and consumer protection on RTC-related products and services.
- ▶ Moreover, Sections 602-P and 702-N of the MORNBF, as amended by Circular No. 1048 dated 06 September 2019, requires RTCs to ensure that their consumers have a **reasonable holistic understanding** of the products and services which they may be acquiring or availing. In this context, **full disclosure and utmost transparency**, to the extent *allowed under applicable laws and regulations*, are the critical elements that empower the consumer to make comparisons and informed financial decisions.
- ▶ The RTCs shall implement measures to ensure that customers are adequately informed and protected when transacting with their accredited RSAs, including mechanisms to verify accredited RSAs and to lodge complaints for RSA-related transactions.

The following should therefore be observed in relation to the foregoing:

1. The **RTC shall be responsible** for ensuring its accountability to the customer for all acts and omissions of its RSAs on RTC-related products and services.
2. In all advertising and marketing materials, terms and conditions on the services, and other forms of communication, it **must be clear to the customer** that the products and services being offered by the accredited RSAs are products and services of the RTC.
3. To facilitate easy identification of the RTC including its accredited RSAs and to protect the customer from transacting with unauthorized RSAs, the RTC shall:
 - ▶ Provide a uniform affixed signage which should be noticeable and readable by the customers to be displayed conspicuously in the premises of the RTC offices including its RSAs indicating the following:
 1. The RTC is supervised by the Bangko Sentral ng Pilipinas;
 2. The RSA is an accredited RSA of the RTC;
 3. Logo of the RTC; and
 4. RTC's customer care hotline, email address and other consumer assistance channels.

The foregoing signage shall also appear in the website, and/or other media platforms of the cash agents.

- ▶ Publish on its website or in any other media platforms, an updated list of its offices and accredited RSA, including their complete registered business name, contact number(s)/details and respective location/address.
1. The RTC should establish a mechanism to escalate client complaints that are coursed through RSAs including the committed turn-around time to respond to its clients. The said escalation mechanism should be posted in the RTC's website.

Anti-Money Laundering Council (AMLC) 2021 Suspicious Transaction Report (STR) Quality Review

Circular Letter CL-2021-044 dated 1 June 2021

- ▶ The study highlighted the following data quality and system issues:
 1. Potential Over Usage of Suspicious Indicator (SI) 6 for Defensive Reporting

SI6 (i.e., the transaction is similar, analogous or identical to any of the foregoing) has been the top reason for filing of STRs, wherein **96 percent** were concentrated on eleven CPs. SI6 serves as a catchall category which the CPs can use if none of the listed predicate crimes or SIs are applicable. However, the **use of SI6 has been misused and abused by CPs** as random sampling of STRs showed various misuses of SI6 that are not in accordance with the AMLC Registration and Reporting Guidelines (ARRG) such as:

 - ▶ Using SI6 as additional reason or leaving the additional reason blank;
 - ▶ Additional reason provided was another or multiple suspicious indicators;
 - ▶ Additional reasons provided described another suspicious indicator which should have been used as reason for filing, instead of SI6;
 - ▶ Using SI6 even when the predicate crime is already known;
 - ▶ Using the narrative as the additional reason which describes a more appropriate predicate crime (e.g., drug trafficking, graft and corruption);
 - ▶ Additional reason is vague;
 - ▶ High-risk predicate crime enveloped in the additional reason;
 - ▶ Additional reason was due to internal transactions monitoring system (TMS) and other listed indicators which should have been used instead of SI6; and
 - ▶ Using SI6 for alleged cases and related parties which should have been filed under more descriptive predicate crimes (e.g., graft, terrorist financing/terrorism, qualified theft, swindling, carnapping).

CL No. CL-2021-044 presents the trend analysis for the covered periods, assesses the technical compliance and investigative value of the STRs, and identifies the reporting gaps and challenges of CPs, with the overall objective of providing guidance on how to further improve the quality of STRs.

Use of SI6 may downplay the risk and prioritization of the STRs. CPs using SI6 with high-risk crimes as additional reason will be able to circumvent the ARR requirements of mandatory uploading of Know-Your-Customer documents for PC1 (Kidnapping for Ransom), PC2 (Drug Trafficking and other related offenses), PC12 (Hijacking, destructive arson, and murder, including those perpetrated by terrorists against non-combatant persons and similar targets), PC13 (Terrorism and conspiracy to commit terrorism), and PC14 (Financing of Terrorism).

2. Continuous Misreporting of Fraud Schemes and Activities

Some CPs still misreport swindling and fraud cases under the **predicate offenses** PC16 (Fraud and Illegal Exaction and Transactions) and PC18 (Forgeries and Counterfeiting) instead of PC9 (Swindling) and PC33 (Fraudulent Practices and Other Violations Under the Securities Regulations Code of 2000).

Guidelines for Obtaining a Certificate of Eligibility (COE) under RA No. 11523, otherwise known as the FIST Act

Memorandum No. M-2021-034 provides guidelines for BSFIs that intend to obtain a COE for purposes of availing of the tax exemptions and privileges for the sale/transfer of NPA to a FISTC or to an individual or for transactions involving *dacion en pago* by the borrower or by a third party on behalf of a borrower to a BSFI.

Memorandum No. M-2021-034 dated 4 June 2021

Based on M-2021-034:

- ▶ The following **transactions**, which pertain to Rule 15.1 (1) to (6) of the IRR, shall be issued a COE to be entitled to tax exemptions and fee privileges:
 1. Transfer of an NPL by a BSFI to a FISTC;
 2. Transfer of a ROPA by a BSFI to a FISTC;
 3. Dation in payment (*dacion en pago*) of an NPL by a borrower to a BSFI;
 4. Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to a BSFI;
 5. Transfer of an NPL by a BSFI to an individual; and
 6. Transfer of a ROPA by a BSFI to an individual.
- ▶ Prior to the filing of an application for COE, the BSFI shall coordinate with the BSP, through the appropriate supervising department, its **intention/plan** to sell/transfer its NPAs pursuant to the FIST Act and its IRR, and to develop a reconciled and final master list of eligible NPAs.
- ▶ On the Submission of the Master List of Eligible NPAs (Master List)
 1. **Master List** - refers to the pool of assets as of a quarter-ended reference date that meets the definition of NPAs under the FIST Act and its IRR, for which the BSFI intends to obtain a COE. The BSFIs shall submit its Letter of Intent, Master List, NPA schedules, Corporate Secretary's Certificate on the approval of Board of Directors (BOD) or Board of Trustees (BOT) on the plan to sell/transfer NPAs to a FISTC and/or individual; and sworn certification via email to FIST@bsp.gov.ph, copy furnished the appropriate supervising department of the BSP.

The sworn certification **shall be signed** by the:

- ▶ President;
- ▶ Chief Executive Officer (CEO);
- ▶ General Manager (GM);
- ▶ Or a *senior officer of equivalent rank*
- ▶ Or by the country head in case of a **foreign branch bank (FBB)**; and
- ▶ Chief Compliance Officer

The BSP will start accepting submission of Master List with reference date as of 31 March 2021 upon effectivity of these guidelines. The Master List shall be submitted to BSP not earlier than 15 working days after the quarter-ended reference date to ensure that corresponding NPA schedules are available and their balances will reconcile with the BSP-Financial Reporting Package as of the said reference date. The prescribed dates for submission of Master List are as follows:

Master List Quarter-End Reference Dates (Initial or Updates)	Prescribed Dates for Submission
31 Mar 2021	31 May 2021 to 30 Jun 2021
30 Jun 2021	15 Jul 2021 to 30 Sep 2021
30 Sep 2021	15 Oct 2021 to 31 Dec 2021
31 Dec 2021	15 Jan 2022 to 31 Mar 2022
31 Mar 2022	15 Apr 2022 to 30 Jun 2022
30 Jun 2022	15 Jul 2022 to 30 Sep 2022
30 Sep 2022	15 Oct 2022 to 31 Dec 2022
31 Dec 2022	15 Jan 2023 to 31 Jan 2023

- ▶ Once the Master List is validated and verified as acceptable, the BSP shall provide the BSFI with a copy of the Final Master List as reference for its COE application. The Final Master List shall be released/sent via email to the BSFI through its registered email address.
- ▶ The Final Master List, initial or updated, shall include **eligible NPAs on or before the quarter-ended reference date**, which assets meet the definition of NPAs pursuant to the FIST Act and its IRR upon evaluation of the appropriate supervising department of the BSP. The COE applied for by the BSFI shall pertain only to NPAs in the said Final Master List.
- ▶ On COE application
 1. Upon receipt of the Final Master List, the BSFI shall file with/send to the BSP an application for issuance of COE. The soft/scanned copies of the application shall be sent via email to FIST@bsp.gov.ph (copy furnished the appropriate supervising department), addressed to the Director/Head of the appropriate supervising department of the BSP. Although **no specific** form is prescribed, the applicant BSFI **shall describe in sufficient detail** its proposed transaction, identifying its counterparty/ies and disclosing the terms, conditions and all material commitments related to the transaction.

2. The COE application shall include a written authority to debit the BSFI's demand deposit account (DDA) for the applicable (non-refundable) processing fee (please refer to item no. 13 for the corresponding fees for each COE application). The BSFI's DDA shall be automatically debited upon receipt of the application.
3. In the case of BSFIs that do not have DDA with BSP, proof of payment of (non-refundable) processing fee shall be included in the COE application. BSFIs are expected to inform/coordinate with the appropriate supervising department of their intention to pay the amount of processing fee in order to receive through email an Order of Payment Number and the details on how to pay.
4. The COE application shall also be accompanied by a sworn certification (Annex D.1 for FISTC and Annex D.2 for Individual, for the prescribed format/template) signed by the President, CEO, GM or a senior officer of equivalent rank, who is authorized by the BOD/BOT, or by the country head in the case of an FBB, and the CCO certifying, among other things, that:
 - a. The assets to be sold/transferred are NPA/s as defined under the FIST Act and its IRR;
 - b. The proposed sale/transfer of said NPA/s is a True Sale;
 - c. The notification requirement to the borrowers and all persons holding prior encumbrance upon the asset mortgaged or subject to security interest has been complied with; and
 - d. The maximum 30-day period for renegotiation and restructuring of the NPL/s has been complied with.

Items c and d shall only apply to an NPL.

5. In the case of **sale/transfer** of NPAs, the application for COE shall be accompanied by a notarized Deed of Transfer or equivalent document with the following minimum disclosures/provisions:
 - a. The sale is on a "without recourse" basis;
 - b. To hold free and harmless the BSP and its officers and staff; and
 - c. Profit sharing agreement, if any.

In the case of *dacion en pago* by a borrower or a third party on behalf of a borrower to a BSFI, the application for COE on the NPL being settled shall be accompanied by a notarized Deed of Dacion or equivalent document executed by the borrower, the third party (as applicable), the registered owner of the property, and the BSFI.

6. Processing fees applicable, as follows:

a. If the transfer is made to a FISTC:

Type of BSEI	Processing Fee
Universal and Commercial Banks	P50,000
Thrift Banks	20,000
Rural and Cooperative Banks	15,000
Non-Bank Financial Institutions	10,000

- b. P5,000 in case of a *dacion en pago* arrangement by an individual or corporate borrower; and
- c. P5,000 if the transfer involves a single-family residential unit ROPA or an empty lot ROPA or an NPL secured by REM on said residential unit or an empty lot to an individual.

SEC Filing, Payments and Other Deadlines

Extension of the Deadline for the Submission of Forms/Notices pursuant to SEC MC No. 28, Series of 2020 (Creation/Designation of email account addresses and mobile phone numbers for transactions with the SEC)

The SEC extended the deadlines for submission of the Annual Reports for Calendar Year ending 30 December 2020 and the Quarterly Report for the period ending 1 March 2021.

SEC Notice dated 7 May 2021

The SEC extended the deadline for corporations, associations, partnerships, and individuals under the jurisdiction and supervision of the SEC to comply with SEC MC No. 28, series of 2020 (creation/designation of e-mail account addresses and mobile numbers for transactions with the SEC), without penalty, until 30 June 2021.

The forms/notices may be filed online through the email address MC28_S2020@sec.gov.ph. Filing of the forms/notices beyond 30 June 2021 shall be considered as non-compliance and will be subject to a P10,000 penalty.

Revised Guidelines on the Submission of Documents, Issuance of Payment Assessment Form, Other Requests, and Compliance

SEC Notice dated 12 May 2021

The SEC issued revised guidelines on the submission of documents, processing of online requests for the issuance of Payment Assessment Forms (PAFs), monitoring, issuance of clearances, and payment of Annual Fees by Corporate Governance and Finance Department (CGFD)-covered entities.

This is in light of the issuance of SEC MC No. 03, Series of 2021 (SEC M.C. No. 3, s. 2021), which provides the schedule and procedure for the 2021 filing of the AFS, General Information Sheet (GIS) and other covered reports relative to the use of the Online Submission Tool (OST) and taking into consideration the prevailing COVID-19 pandemic and the continuous need to comply with the safety measures and protocols.

The SEC provided revised guidelines on the submission of documents, issuance of payment assessment forms, other requests, and compliance requirements of investment companies, registered issuers of proprietary and non-proprietary shares/timeshares, public companies, financing companies, lending companies, foundations, accredited microfinance NGOs, corporate governance institutional training providers, and publicly-listed companies under the supervision of the SEC's Corporate Governance and Finance Department.

- ▶ List of documents to be submitted via email (ICTD/CGFD) in relation to OST under SEC M.C. No. 3, s. 2021

Description	How to file	Where to file	Email Subject Line/Head
A. Documents currently not covered by the OST under SEC MC No. 03, Series of 2021 which do not require payment of filing/processing fees:			
<ul style="list-style-type: none"> ▶ Annual Report (SEC Form 17-A) ▶ Quarterly Report (SEC Form 17-Q) ▶ Current Report (SEC Form 17-C) ▶ Monthly Sales and Redemption Report of Investment Companies ▶ Beneficial Ownership Reports (SEC Form 18-A or 18-AS and SEC Form 23- A/23-B) ▶ Corporate Governance Institutional Training Providers (CG-ITPs) Advance Report of CG Trainings (without request for exemption from speaker accreditation) ▶ Completion Reports of CG-ITPs ▶ Integrated Annual Corporate Governance Report (I-ACGR) ▶ Material Related Party Transactions (RPT) Policy ▶ Manual on Corporate Governance for Public Companies and Registered Issuers ▶ Manual on Corporate Governance for Publicly Listed Companies (PLCs) ▶ Advisement Report on Material RPTs ▶ Compliance Officer's Certificate (CG Form-2020) ▶ Sworn Certification in compliance with SEC MC Circular No. 18 Series of 2019 ▶ SEC Form 1 - Existing Online Lending Platform ▶ SEC Form 2 - Prospective Online Lending Platform ▶ AMLA Compliance Form ▶ Revised Manual on Corporate Governance for financing companies, if applicable ▶ SEC Form MCG-2009 - Compliance Officer's Certification on the extent of compliance with the Manual on Corporate Governance for financing companies ▶ Corporate Secretary's Certification on Attendance in Board Meetings for financing companies 	<p>Via email</p> <p>Note: The ICTD will still accept submissions via courier services, but to ensure a prompt and timely receipt and review of documents, companies that will file via courier services are highly encouraged to send a scanned copy of the document to CGFD's email at cgfd@sec.gov.ph</p>	<p>ICTD Account:</p> <p>ictdsubmission@sec.gov.ph</p> <p>Note: There is no need to furnish CGFD a copy (CC) but please ensure that the email subject line would include the word CGFD.</p>	<p>Include the word CGFD in the email subject line for efficient and proper distribution of ICTD's forward facility thus:</p> <p>CGFD_Complete Name of the Company_Type of Document_Date Submitted</p> <p>Example: CGFD_ ABC Investment Fund Corporation_SEC Form 17-C_20April2021</p>

Description	How to file	Where to file	Email Subject Line/Head
B. Documents currently not covered by the OST under SEC MC No. 03, Series of 2021 which require payment of filing/ processing fees:			
▶ Registration Statement (SEC Form 12-1)	Via email only Note: To ensure prompt and timely receipt and review of documents and to avoid duplicity in the recording of documents by CGFD and ICTD, submissions via courier services through SEC Express Nationwide Submission (SENS) shall no longer be allowed for items covered by 1 (B) of this Notice.	cgfd_id@sec.gov.ph	CGFD_Complete Name of the Company_Type of Document_ Date Submitted Example: CGFD_XYZ Corporation_SEC Form_SEC 12-1_20April2021
▶ Application for License to Act as Investment Company (SEC ICA Form 7-A)		cgfd_id@sec.gov.ph	CGFD_Complete Name of the Company_Type of Document_ Date Submitted Example: CGFD_XYZ Corporation_SEC Form_SEC ICA Form 7-A_20April2021
▶ Information Statement (SEC Form 20-IS)		cgfd_id@sec.gov.ph	CGFD_Complete Name of the Company_Type of Document_ Date Submitted Example: CGFD_XYZ Corporation_SEC Form 20-IS_20April2021
▶ Tender Offer Report (SEC Form 19-1)		cgfd_id@sec.gov.ph	CGFD_Complete Name of the Company_Type of Document_ Date Submitted Example: CGFD_XYZ Corporation_SEC Form 19-1_20April2021
▶ Request for Confidentiality		cgfd_id@sec.gov.ph	CGFD_Complete Name of the Company_Type of Document_ Date Submitted Example: CGFD_XYZ Corporation_Request for Confidentiality_20April2021
▶ Petition for Voluntary Revocation		cgfd_id@sec.gov.ph	Complete Name of the Company_Type of Document_ Date Submitted Example: CGFD_XYZ Corporation_Petition for Voluntary Revocation_20April2021

Description	How to file	Where to file	Email Subject Line/Head
<ul style="list-style-type: none"> ▶ Request for Exemptive Relief and other Request for Exemption 		<p>cgfd_ld@sec.gov.ph</p> <p>for investment companies, issuers of proprietary and non-proprietary securities, and public companies</p> <p>cgfd_cgd@sec.gov.ph</p> <p>for CG ITPs and publicly-listed companies under the supervision of CGFD</p> <p>cgfd_md2@sec.gov.ph</p> <p>for lending and financing companies</p>	<p>CGFD_Complete Name of the Company_Type of Document_Date Submitted</p> <p>Example: <i>CGFD_XYZ Corporation_Request for Exemption_20April2021</i></p>
<ul style="list-style-type: none"> ▶ Request for Exemption from Speaker Accreditation on CG Trainings 		<p>cgfd_cgd@sec.gov.ph</p>	<p>CGFD_Complete Name of the Company_Type of Document_Date Submitted</p> <p>Example: <i>CGFD_XYZ Corporation_Request for Exemption From Speaker Accreditation_20April2021</i></p>
<ul style="list-style-type: none"> ▶ Request for Approval of Inhouse CG Trainings 		<p>cgfd_cgd@sec.gov.ph</p>	<p>CGFD_Complete Name of the Company_Type of Document_Date Submitted</p> <p>Example: <i>CGFD_XYZ Corporation_Request for Approval of In-house CG Trainings_20April2021</i></p>
<ul style="list-style-type: none"> ▶ Application for Accreditation as CG-ITP 		<p>cgfd_cgd@sec.gov.ph</p>	<p>CGFD_Complete Name of the Company_Type of Document_Date Submitted</p> <p>Example: <i>CGFD_XYZ Corporation_Request for Accreditation as CG ITP_20April2021</i></p>
<ul style="list-style-type: none"> ▶ Application for Renewal of Accreditation as CG-ITP 		<p>cgfd_cgd@sec.gov.ph</p>	<p>CGFD_Complete Name of the Company_Type of Document_Date Submitted</p> <p>Example: <i>CGFD_XYZ Corporation_Request for Renewal of Accreditation as CG ITP_20April2021</i></p>
<ul style="list-style-type: none"> ▶ Annual Information Statement (AIS) 		<p>cgfd_md2@sec.gov.ph</p>	<p>CGFD_Complete Name of the Company_Type of Document_Date Submitted</p> <p>Example: <i>CGFD_XYZ Corporation_Annual Information Statement_20April2021</i></p>

Description	How to file	Where to file	Email Subject Line/Head
C. Documents currently not covered by the OST under SEC MC No. 03, Series of 2021 which do not require payment of filing/processing fees:			
<ul style="list-style-type: none"> Application for Accreditation of Microfinance NGO (MNRC MC No. 4, Series of 2018 http://www.sec.gov.ph/wp-content/uploads/2018/01/2018MNRCIssuances-MCNo4.pdf) 	Via email only	mnrc_secretariat@sec.gov.ph	MNRC_Complete Name of the Company_Type of Document_Date Submitted Example: MNRC_XYZ Microfinance_Application for Accreditation_20April2021
<ul style="list-style-type: none"> Annual Submission of Reports by Accredited Microfinance NGOs (MNRC MC No. 2 Series of 2020 https://www.sec.gov.ph/mnrc-mc-2020/mnrc-mc-no-02-s-2020/) Copies of GIS, AFS, NSPO Forms, COEPs filed with SEC; SFFS for MF-NGOs; Loan Portfolio and Aging Report; Operations Report; and Updated Report Card Template, whether as a large or small MF-NGO 			MNRC_Complete Name of the Company_Type of Document_Date Submitted Example: MNRC_XYZ Microfinance_Annual Submission_20April2021
<ul style="list-style-type: none"> Company's letter-reply to/ in compliance with the Department's letters and orders Reply to show cause/ comment/ advisement letter Other requests or correspondence 		cgfd_md2@sec.gov.ph for financing and lending companies, foundations, and accredited micro finance NGOs cgfd_ld@sec.gov.ph for investment companies, issuers of proprietary and nonproprietary securities, and public companies cgfd_cgd@sec.gov.ph for CG-ITPs and PLCs under the supervision of CGFD mnrc_secretariat@sec.gov.ph for MNRC related concerns	CGFD_Complete Name of the Company_Type of Document_Date Submitted Example: CGFD_XYZ Corporation_ Letter-reply_20April2021 CGFD_XYZ Corporation_Reply to Show Cause Letter_20April2021

Description	How to file	Where to file	Email Subject Line/Head
D. Year 2021 filing of AFS, GIS, and other covered reports under Sec. 2 of SEC MC No. 03, Series of 2021:			
<ul style="list-style-type: none"> ▶ Audited Financial Statements ▶ GIS ▶ Sworn Statement for Foundation ▶ Special Form for Financial Statements (SFFS) including the following: <ul style="list-style-type: none"> i. PHFS - SFFS for Investment Companies and Publicly-Held Companies enumerated in Section 17.2 of the SRC ii. LCFS, LCIF - SFFS for Lending Companies iii. FCFS, FCIF - SFSS for Financing Companies ▶ Affidavit of Non-Holding of Annual Meeting 	Via OST only	OST	Please see https://www.sec.gov.ph/mc-2021/mc-no-03-s-2021/ for the specific formats.
<p>** NOTE: If technical errors were encountered while submitting documents via OST, you may screenshot the error, print it, and attach to the hard copies of your submission. The report/s, together with the screenshot of the error, may be filed to the SEC via SENS or to the receiving unit over the counter.</p>			

- ▶ Requirements for submission of documents under 1 (B) and (C) above.

Unless otherwise required by the Commission, the submission of documents via email for items covered by Item 1 (B) and (C) shall constitute as full and final submission, such that, the covered company shall no longer be required to file hard copies of the same provided all the requirements for each type of document are complied with.

Description	Requirements
<p>A. Documents which require notarization</p> <ul style="list-style-type: none"> ▶ Registration Statement (SEC Form 12-1) ▶ Application for License to Act as Investment Company (SEC ICA Form7-A) ▶ Petition for Voluntary Revocation ▶ Annual Information Statement ▶ Application for Accreditation of Microfinance NGO ▶ Annual Submission of Reports by Accredited Microfinance NGOs: <ul style="list-style-type: none"> ▶ FFS for MF-NGOs ▶ Loan Portfolio and Aging Report ▶ Operations Report 	<ul style="list-style-type: none"> a. Scanned copies of documents with physical/wet signatures b. Proof of Payment of filing fee, if applicable
<p>B. Documents which do not require notarization</p> <ul style="list-style-type: none"> ▶ Request for Confidentiality ▶ Information Statement (SEC Form 20-IS) ▶ Tender Offer Report (SEC Form 19-1) ▶ Request for Confidentiality ▶ Request for Exemptive Relief and other Request for Exemption ▶ Request for Exemption from Speaker Accreditation on CG Trainings ▶ Request for Approval of In-house CG Trainings ▶ Application for Accreditation as CG ITP ▶ Application for Renewal of Accreditation as CG-ITP ▶ Annual Submission of Reports by Accredited Microfinance NGOs <ul style="list-style-type: none"> ▶ Updated Report Card Template, whether as a large or small MF-NGO ▶ Company's letter-reply to/ in compliance with the Department's letters and orders ▶ Reply to show cause/comment/advisement letter ▶ Other requests or correspondence 	<ul style="list-style-type: none"> a. Scanned copies of documents with physical/wet signatures b. Notarized certification that information contained in the reports are true and correct c. Proof of Payment of filing fee, if applicable

Notarized Certification - This is a sworn certification of the person who prepared the report or document on behalf of the covered company that the information contained therein is true and correct. This certification must be attached to the same email together with the subject document to be filed. The “person” referred to in this Notice is the director, officer or any person duly authorized by the company to file the document. All covered companies are advised to use the template as specified in the Notice for the required Notarized Certification.

Note: All submissions/requests/compliance made via email at cgfd_ld@sec.gov.ph or cgfd_cgd@sec.gov.ph or cgfd_md2@sec.gov.ph or mnrc_secretariat@sec.gov.ph shall only be considered officially received if the relevant filing fee has been paid and/or the required notarized certification, if applicable, has been attached to the document.

- ▶ Processing of Requests for the Issuance of a PAF to pay penalties and/or processing/ filing fees

CGFD-covered companies may request for, and be issued, electronic copies of the PAF by sending a request therefor via email to cgfd@sec.gov.ph.

The following format shall be used in the subject head:

CGFD_NAME OF COMPANY_REQUEST FOR PAF_DATE OF EMAIL

- ▶ **Payment of Annual Fees**

1. *Payment of Annual Fees of Lending and Financing Companies*

Lending and financing companies are advised to send their requests for electronic copies of the PAF via email to cgfd_md2@sec.gov.ph.

2. *Payment of Annual Fees of Unitized Mutual Funds*

Unitized Mutual Funds are advised to send their requests for electronic copies of the PAF via email to cgfd_ld@sec.gov.ph.

- ▶ **Request for Monitoring and Issuance of Monitoring Sheet/Clearance**

1. Requests for monitoring of covered companies shall be sent via email to the following addresses:

Companies	Addressee
▶ Publicly-Listed Companies under the supervision of CGFD	cgfd_cgd@sec.gov.ph
▶ Investment Companies	cgfd_ld@sec.gov.ph
▶ Issuers of Proprietary and Non-Proprietary Securities	
▶ Public Companies	
▶ Foundations	cgfd_md2@sec.gov.ph
▶ Accredited Microfinance NGOs	
▶ Financing Companies	
▶ Lending Companies	

The following format shall be used in the subject head:

CGFD_NAME OF COMPANY_REQUEST FOR MONITORING_DATE OF EMAIL

2. The list of documentary requirements and procedures for Financing Companies, Lending Companies, Foundations, and Accredited Microfinance NGOs are provided in these links:

For Lending Companies and Financing Companies:
<http://www.sec.gov.ph/lending-companies-and-financing-companies/request-for-monitoring/>

For Foundations and Accredited Microfinance NGOs:
<https://www.sec.gov.ph/microfinance-ngo-regulatory-council/request-for-monitoring-2/>

All inquiries pertaining to CGFD matters and application/s shall be sent via email at cgfd@sec.gov.ph.

Extension of the Deadline for the Submission of Annual Reports for the Calendar Year ended 31 December 2020 and Quarterly Report as of 31 March 2021

The SEC extended the deadlines for submission of the Annual Reports for Calendar Year ending 30 December 2020 and the Quarterly Report for the period ending 1 March 2021.

SEC Notice dated 18 May 2021

The SEC resolved to further extend the deadline for the submission of Annual Reports (SEC Form 17-A) for the calendar year ended 31 December 2020 from 17 May 2021 to 1 June 2021.

This is in light of the Advisory issued by the Bureau of Internal Revenue informing concerned taxpayers that the submission of the required attachments (which includes the AFS) to the electronically filed amended Annual Income Tax Return shall be made on or before 30 May 2021, as well as the SEC's recognition of the challenges in the preparation and finalization of the AFS.

Considering that the Statement of Financial Position as of the calendar year ended 31 December 2020 is required to be presented in the Interim Financial Statements, the SEC also resolved to extend the deadline for the submission of Quarterly Reports (SEC Form 17-Q) for the period ended 31 March 2021 to 1 June 2021.

Extension of the Deadline to File Mandatory Declarations under the Beneficial Ownership Transparency Guidelines

The SEC extended the deadline to file mandatory declarations under Sections 6 and 7 of SEC MC No. 01, Series of 2021 (Beneficial Ownership Transparency Guidelines) to 31 July 2021.

SEC Notice dated 28 May 2021

The SEC further extended the deadline for submission of all mandatory disclosures under Sections 6 and 7 of MC No. 01, Series of 2021 to 31 July 2021. This is in consideration of the strict measures imposed under the Enhanced Community Quarantine and Modified Enhanced Community Quarantine from 29 March to 14 May 2021 due to the surge in COVID-19 infections.

Registration with the Anti-Money Laundering Council and Submission of Proof of Registration

The SEC reminded all newly covered financing companies and lending companies under SEC MC No. 04, Series of 2021 to register with the AMLC and ensure Submission of Proof of Registration.

SEC Notice dated 02 June 2021

All newly covered Financing Companies and Lending Companies (FCs/LCs), as covered persons (CPs) supervised and regulated by the SEC, are given notice to comply with the requirement to register with the AMLC through the AMLC Portal. Also, Compliance Officers are required to update their respective company's user account information in the AMLC Portal every 2 years.

Those who are not yet registered with the AMLC are given until 21 June 2021 to register and submit proof of such registration to the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (AMLD-EIPD) of the SEC.

The following procedures shall be followed:

- ▶ The CPs shall register/update their registration with the AMLC. For more information on how to register, please refer to the step-by-step AMLC registration procedure at <http://www.amlc.gov.ph/2015-12-09-07-34-10/amlc-registration>.
- ▶ The CPs shall submit a copy of the Certificate of Registration issued by the AMLC or the email confirmation from AMLC that the registration was approved as proof of registration.
- ▶ In submitting such proof of registration, the CPs shall use the official email address filed with the Commission pursuant to SEC MC No. 28, Series of 2020.
- ▶ The proof of registration shall be submitted via electronic mail to amld-amlcreg@sec.gov.ph.

- ▶ The email should contain the following subject:

Submission of Proof of AMLC Registration - Company Name, Date of AMLC Registration

(example: Submission of Proof of AMLC Registration - XYZ Company, 31 May 2021)

- ▶ There is no need to submit a hard copy of the proof of registration.

Failure to register or update the AMLC registration is subject to applicable penalties as provided for under the 2018 AML/CFT Guidelines for SEC Covered Persons and/or the 2018 Implementing Rules and Regulations of the AMLA, as amended.

For inquiries, CPs may email the AMLD-EIPD at eipd-amld@sec.gov.ph.

Submission of Money Laundering and Terrorist Financing Prevention Program

SEC Notice dated 10 June 2021

As CPs supervised and regulated by the SEC, all newly covered financing companies and lending companies under SEC MC No. 04, Series of 2021 and those applying for a Certificate of Authority to operating a financing company or a lending company are required to formulate and implement a comprehensive and risk-based MTPP.

Those who have not yet submitted their MTPPs are given until 21 June 2021 to submit their MTPP to the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (AMLD-EIPD) of the Commission.

The following procedures shall be followed in submitting the MTPP:

- ▶ The official email address of the company as declared under SEC MC No. 28, Series of 2020 shall be used by CPs in submitting the MTPP.

The SEC reminded all newly covered financing companies and lending companies under SEC MC No. 04, Series of 2021 and those applying for a Certificate of Authority to operating a financing company or a lending company to submit a MTPP.

- ▶ A copy of the Board Resolution or Certification by the country/regional/area head or its equivalent for local branches approving the adoption of the MTPP shall be attached to the MTPP.
- ▶ The MTPP and its attachment shall be submitted via electronic mail at eipd-amld@sec.gov.ph using this format:

Subject: MTPP_Company Name_License Type
(Example: MTPP_ABC Corporation_Financing Company)

Document File Name: MTPP_Company Name_Date of Submission
(Example: MTPP_ABC Corporation_03 June 2021)

- ▶ An email confirmation from the AMLD-EIPD that the submission was duly received will be sent to the CP.
- ▶ There is no need to submit a hard copy of the MTPP and its attachment.

For entities applying for Certificate of Authority to Operate a financing company or lending company, the following procedures shall be followed:

- ▶ A copy of the template of a Sworn Certification is provided under SEC MC No. 29, Series of 2020 and can be accessed thru the following link: <https://www.sec.gov.ph/mc-2020/mc-no-29-s-2020/>
- ▶ After accomplishing the Sworn Certification, submit one (1) copy to the AMLD-EIPD located at Ground Floor, North Wing, Secretariat Building, PICC Complex, Pasay City or thru email at eipd-amld@sec.gov.ph using this format:

Subject: Sworn Certification_Company Name_Industry Classification
(Example: Sworn Certification_ABC Corporation_Broker Dealer)

Document File Name: Sworn Certification_Company_Name_Date of Submission
(Example: Sworn Certification_ABC Corporation_03 June 2021)

- ▶ The CP's copy of Sworn Certification will be stamped "Received" by the AMLD-EIPD or an email confirmation shall be sent by the AMLD-EIPD stating that the Certification was duly received.
- ▶ The "Received" Sworn Certification or the Sworn Certification with the attached email confirmation shall form part of the documentary requirements for licensing to be submitted to the concerned SEC departments/offices.
- ▶ Once the application for registration/licensing is approved, the CPs shall submit a soft copy of its MTPP within ten (10) days from receipt of its Certification of Registration and/or secondary license from the SEC following the procedures described above in submitting the MTPP.

Failure to submit the MTPP is subject to applicable penalties as provided for under the 2018 AML/CFT Guideline for SEC Covered Persons and/or the Implementing Rules and Regulations of the AMLA, as amended.

For inquiries, CPs may contact the AMLD-EIPD at eipd-amld@sec.gov.ph or at 8818-5717.

Supreme Court Case

When a business is transferred in exchange for shares, the goodwill of the business is also transferred

Commissioner of Internal Revenue vs. The Hongkong Shanghai Banking Corporation Limited - Philippine Branch

Supreme Court First Division G.R. No. 227121, promulgated 9 December 2020

Goodwill is an intangible asset derived from the conduct of business and cannot be transferred separately and independently from the business as a whole.

When a business is transferred in exchange for shares, the goodwill of the business is also transferred. The share transfer is subject to capital gains tax and not to ordinary income tax.

Facts:

The Hongkong and Shanghai Banking Corporation Limited (HSBC) carried on in the Asia Pacific Region a merchant acquiring business (MAB) where accredited merchants honored credit cards issued by HSBC under various card associations for which HSBC is a member.

HSBC, through the Hongkong Shanghai Banking Corporation Limited - Philippine Branch (the "Branch") established Global Payment Asia Pacific-Phils., Inc. (GPAP PH). HSBC transferred its MAB in the Philippines, including point-of-sale (POS) terminals, other information technology assets, and merchant agreements of its MAB in the Philippines. In consideration for the MAB transfer, GPAP PH issued its shares of stock to the Branch.

Thereafter, a Deed of Assignment was executed by HSBC and Global Payment Asia Pacific (Singapore Holdings) Private Limited (or GPAP Singapore) for the transfer of GPAP PH's shares to GPAP Singapore.

The Branch then filed an application for, and secured a ruling from, the Bureau of Internal Revenue (BIR) to confirm that the transfer of the MAB (between GPAP PH and the Branch) qualified as a tax-free exchange under Section 40(C)(2) of the Tax Code.

Two years after the issuance of the ruling, the BIR assessed the Branch for deficiency income tax on the alleged sale of Goodwill, pursuant to Section 27(A) of the Tax Code. According to the BIR, the Deed of Assignment (between HSBC and GPAP Singapore) involved a transfer of business or "goodwill," which was subject to ordinary income tax and not capital gains tax (CGT) (which CGT was paid by HSBC).

The BIR denied the Branch's protest letters, which led the Branch to appeal to the Court of Tax Appeals (CTA).

The CTA cancelled the assessment, finding that the transaction covered in the Deed of Assignment involved a transfer of capital asset (shares of GPAP PH), and not a sale of an ordinary asset. The CTA ruled that goodwill is connected to the business itself and cannot be allocated without regard to the business. The Commissioner of Internal Revenue (CIR) cannot treat separately the alleged sale of goodwill from the transfer of HSBC's MAB to GPAP PH and conveniently allocate and reclassify the same as a sale of ordinary asset subject to income tax.

The CTA also explained that goodwill is an asset that cannot exist independently of the business such that the goodwill cannot be sold or purchased independently of the MAB. The transfer by HSBC of its GPAP shares to GPAP Singapore at a premium, whereby the goodwill of the MAB was recognized and valued, involved a sale of capital assets subject to CGT and not income tax.

The CIR appealed to the Supreme Court.

Issue:

Did the transfer of GPAP PH shares to GPAP Singapore involve a sale of goodwill subject to income tax?

Ruling:

No, the transfer did not involve a sale of goodwill.

Goodwill is essentially characterized as an intangible asset derived from the conduct of business and cannot, therefore, be allocated and transferred separately and independently from the business as a whole. Thus, when HSBC transferred its MAB in the Philippines, inclusive of POS terminals, other information technology assets and merchant agreements, to GPAP PH, in exchange for shares, the goodwill of the business was also transferred to GPAP PH, being the new owner of the MAB and its assets.

When HSBC subsequently assigned its GPAP PH shares to GPAP Singapore, the goodwill of the MAB remained with GPAP PH. GPAP Singapore merely stepped into the shoes of HSBC as the majority stockholder of GPAP PH.

A fundamental rule in corporation law is that a corporation is clothed with a personality separate and distinct from its stockholder, and the "mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality."

CTA Cases

Refund/Issuance of Tax Credit

Axelum Resources Corp. vs. Commissioner of Internal Revenue (CIR)

CTA Case No. 9969 promulgated 15 June 2021

Facts:

A Corporation applied for refund of its excess unutilized input VAT attributable to its zero-rated sales for the period April 1 to June 30, 2016, which was only partially granted by the BIR. Thus, A Corporation elevated the decision of the BIR to the Court of Tax Appeals (CTA) claiming that it is entitled to more than the amount of VAT refund that the BIR has granted.

Issue:

Is A Corporation entitled for VAT refund?

Ruling:

Yes. In this case, the CTA recomputed the amount that should be refunded to the corporation (which is higher than the amount granted by the BIR). In its recomputation, the CTA held that for VAT registered person claiming VAT zero-rated **direct** export sales, such person must present at least three types of documents, to wit:

- a. the sales invoice as proof of sale of goods;
- b. the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
- c. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable currency or its equivalent in goods and services.

Only export sales supported by the abovementioned documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the Tax Code, as amended.

VAT registered person claiming VAT zero-rated **direct** export sales must present at least three types of documents to qualify.

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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.