Tax Bulletin

December 2021

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and enable businesses for a better Philippines.

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BIR Administrative Requirements

RR No. 20-2021 implements RA No. 11590, otherwise known as an "Act Taxing POGOs, amending for the Purpose Sections 22, 25, 27, 28, 106, 108 and Adding New Sections 125-A and 288(G) of the NIRC of 1997, as Amended, and for Other Purposes."

RR No. 20-2021 dated on 1 December 2021

Taxation of POGOs and foreign employees

- In lieu of all other direct and indirect internal revenue taxes and local taxes, there shall be levied, assessed and collected from Offshore Gaming Licensees (OGLs), whether Philippine-based or Foreign-based:

  1. Gaming tax equivalent to 5% of the Gross Gaming Revenue or Receipts (GGR) or
  2. 5% of the agreed pre-determined minimum monthly revenue from gaming operations, whichever is higher.

- Gaming tax shall be directly remitted to the BIR not later than the 20th day following the end of each month.

Revenue from non-gaming operations		
	Tax Rate	Tax Base
Philippine-based OGLs	25% of the taxable income derived during each taxable year	Within and without the Philippines
Foreign-based OGLs		Within the Philippines

- Non-gaming revenues of all OGLs shall be subject to Value-Added Tax (VAT) or Percentage Tax, whichever is applicable.

- Accredited Service Providers (ASPs) are those which provide ancillary services to OGLs or any offshore gaming operators with license acquired from different jurisdictions. Ancillary services include but are not limited to customer and

technical relations and support, IT, gaming software, data provisions, payment solutions, live studio and streaming services. ASPs organized within the Philippines shall pay an income tax rate of 25% on its taxable income derived during each taxable year from sources within and without the Philippines.

- Sale of goods and services by VAT-registered ASPs to OGLs paying 5% gaming tax shall be subject to VAT at 0%.

- Sale of goods and services by VAT-registered ASPs related to non-gaming operations of the OGLs is not subject to VAT at 0%.

- Foreign employees, who are employed and assigned in the Philippines by an OGL or its ASP shall have a TIN and pay 25% Final Withholding Tax (FWT) on their gross income, which shall be remitted by the employer. Provided, however, that the minimum FWT due for any taxable month from said persons shall not be lower than Php12,500.

- Filing of tax returns and payment of all taxes for the POGO entities and foreign employees be made utilizing the BIR's eFPS and use the appropriate alphanumeric code.

- A POGO entity duly registered with, and enjoying incentives granted by an Investment Promotion Agency (IPA) prior to the effectivity of RA No. 11534 shall continue to enjoy said incentives until the expiration of the transitory period.

Information required by the BIR from POGOs

- Newly established POGO entities shall submit to the BIR the Summary List and Status Update on Foreign Nationals Employed Form (Annex A). Said form contain an initial list of all foreign nationals they employed until the end of the month of their registration with the BIR. The initial list shall be submitted, together with the original copies of the notarized Employment Contracts, accompanied with the English translation if written in a foreign language, not later than the 20th day of the succeeding month.

- All POGO entities shall regularly update the list of their foreign employees by submitting Annex A, together with its attachments (i.e., notarized employment contracts for newly hired, notice of termination for those separated from employment, etc.), not later the 20th day after the close of each month.

- Each POGO Licensing Authority, subject to the BIR's post-audit, shall furnish the BIR not later than the 20th day after the close of each month the following:

    1. The Status Report on OGLs Form (Annex B), which shall contain the amount of gross wagers or bets, payouts, the GGR, and the Minimum Guarantee Fee (MGF) or the minimum amount of regulatory fees paid by each OGL as duly certified by their third-party auditors; and

    2. The List of Foreign Nationals with Issued Gaming Employment License (GEL) Forms (Annex C and Annex C-1), which shall contain the list of POGO entities and foreign employees including their GEL number, etc.

- The BIR shall secure from the Department of Labor and Employment (DOLE) the list of foreign nationals employed by POGO entities who secured Alien Employment Permits (AEP).

- The BIR shall secure from the Bureau of Immigration (BI) the list of foreign nationals employed by POGO entities who secured Provisional Working Permits and/or 9(g) visas.

Penalties provided by RR No. 20-2021

Violation	Penalties
Fraudulent Acts-non-registration, non-payment, under remittance, non-withholding by OGLs, ASPs	Incremental penalties under Section 248 (B), 253 and 255 of the NIRC, As Amended
Failure to pay taxes on POGOs and their foreign employees	Closure orders
Failure to withhold/remit FWT of foreign employees	Governed by NIRC, As Amended and deportation for of the foreign nationals
Employment of Alien without TIN	Fine of Php20,000 for every foreign national without TIN
Failure to submit Annex A and its attachments	Penalties under Section 258 of the NIRC, As Amended; Payment of penalty shall not relieve the employer from submission of the form and attachments
Failure to provide true and correct address	Penalties under Section 258 of the NIRC

Disposition of Revenue from Gaming Tax

- 60% for the implementation of RA No. 11223 or the "Universal Health Care Act;"
- 20% shall be allocated to the Health Facilities Enhancement Program (HFEP), the annual requirements of which shall be determined by the Department of Health; and
- 20% shall be allocated for the attainment of the Sustainable Development Goals (SDGs): Provided that, the specific SDG targets shall be determined by the National Economic Development Authority.

RR No. 21-2021 amends certain provisions of RR No. 16-2005, as amended by RR Nos. 4-2007, 13-2018, 26-2018, and 9-2021 to implement Sections 294(E) and 295(D), Title XIII of the Tax Code, as amended by RA No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act IRR.

RR No. 21-2021 dated on 3 December 2021

Among the salient provisions of this RR are as follows (underscoring amendments and new provisions):

Sections	Implemented/Amended Provisions
SECTION 1. Scope	Pursuant to the provisions of Sections 244 and 245 of the Tax Code, as amended, these Regulations are hereby promulgated to implement Sections 294(E) and 295(D) of Title XIII of the Tax Code, as introduced in CREATE Act, and Section 5, Rule 2 of its IRR, which reads:
	SECTION. 5. Value-added Tax (VAT) zero-rating and exemption - The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise, for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP.

Sections	Implemented/Amended Provisions
	The ***direct and exclusive use for the registered project or activity*** refers to raw materials, inventories, supplies, equipment, goods, packaging materials, services including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out; Provided, That the VAT zero-rating on local purchases shall be granted upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.
SECTION 2. Zero-Rated Sale of Goods or Properties.	Section 4.106-5 of RR No. 16-2005, as amended by RR No. 4-2007, 13-2018, 26-2018, and 9-2021, shall now be read as follows: *SEC. 4.106-5. Zero-Rated Sales of Goods or Properties. – xxx xxx xxx* (a) xxx xxx xxx (b) Sales to persons or entities whose exemption from **direct and indirect** taxes under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate; (c) **Sale of raw materials, inventories, supplies, equipment, packaging materials and goods, to a registered export enterprise, to be used directly and exclusively in its registered project or activity pursuant to Sections 294 (E) and 295 (D) of Republic Act No. 11534 or the "Corporate Recovery and Tax incentives for Enterprise Act" ("CREATE Act") and Section 5, Rule 2 of its IRR for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under time SIPP; Provided, That the term "registered export enterprise" shall refer to an export enterprise as defined under Section 4 (M), Rule 1 of the CREATE Act IRR, that is also a registered business enterprise as defined in Section 4 (W) of the same IRR: Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.**
SECTION 3. Zero-rated sale of services.	Section 4.108-5 of RR No. 16-2005, as amended by RR No. 13-2018, 26-2018, and 9-2021, shall now be read as follows: *SEC. 4.108-5. Zero-Rated Sale of Services.* (a) xxx xxx xxx (b) xxx xxx xxx (1) xxx xxx xxx (2) Services rendered to persons or entities whose exemption **from direct and indirect taxes** 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;

Sections	Implemented/Amended Provisions
	(3) Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise, to be used directly and exclusively in its registered protect or activity pursuant to Sections 294 (E) and 295 (D) of CREATE Act, and Section 5, Rule 2 of its IRR for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; Provided, That the term "registered export enterprise" shall refer to an export enterprise as defined under Section 4 (M), Rule 1 of the CREATE IRR, that is also a registered business enterprise as defined in Section 4 (W) of the same IRR: Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period. (4) xxx xxx xxx (5) xxx xxx xxx (6) xxx xxx xxx

Any rules and regulations, issuances or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended or modified accordingly.

If any of the provisions of these Regulations is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

This issuance shall take effect immediately following its publication in a leading newspaper of general circulation, and shall cover transactions entered into the third quarter of Taxable Year 2021 and onwards.

RMC No. 115-2021 publishes the full text of the letters from the DOH containing updates to the list of VAT-exempt COVID-19 products under RA No. 11534.

RMC No. 115-2021 dated 3 November 2021

- Attached to this RMC are the following letters for the information and guidance of all internal revenue officers, employees and others concerned:

    1. Letter dated 18 October 2021 containing the addendum to the **"List of VAT-Exempt Drugs and Vaccines Prescribed and Directly Used for COVID-19 Treatment."**

    2. Letter dated October 19, 2021 and copy of the updated **"List of VAT-Exempt Drugs and Vaccines Prescribed and Directly Used for COVID-19 Treatment."**

- This Circular **updates and supplements Revenue Memorandum Circular No. 81-2021**, which published the consolidated list of VAT-exempt products and has become the controlling list insofar as the VAT exemption of items under Sections 109(1)(AA) and 109(1)(BB) of the Tax Code, as amended, is concerned.

RMC No. 117-2021 is issued to clarify the provisions of RR No. 16-2021, amending the provisions of RR No. 2-2015, which previously prescribed the submission to the Bureau of soft copies, instead of hard copies, of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) and Certificate of Compensation Payment/Tax Withheld for Compensation Payment With or Without Tax Withheld (BIR Form No. 2316) using a Digital Versatile Disk-Recordable (DVD-R).

RMC No. 117-2021 dated 24 November 2021

- The pertinent amendatory provisions of RR No. 16-2021 affecting both Certificates requires that taxpayers should:

  1. Scan the original copies of BIR Form No. 2307 (or 2316) through a scanning machine or device;

  2. Store the soft copies of BIR Form No. 2307 (or 2316), using the file format and naming conventions prescribed under the available modes or submission facilities of the BIR; and

  3. Submit the soft copies of said BIR Form in accordance with revenue issuances governing the selected modes or submission facilities of the BIR

- The above provisions did not discontinue the submission of these Certificates in DVD-R but instead offered to all concerned taxpayers other modes or submission facilities of the Bureau that are available currently, such as the electronic Audited Financial Statement (eAFS) System. For BIR Form No. 2316, RMC No. 24-2019 has been issued to require the use of Universal Serial Bus (USB) memory stick or other similar storage devices in the absence of DVD-Rs.

- In this connection, for the added convenience of the taxpaying public, the USB memory stick or other similar storage devices may be used for the submission of BIR Form No. 2307. All these devices, modes and facilities may likewise be availed of for the submission of the Certificate of Income Payment Not Subject to Withholding Tax (Excluding Compensation Income) and Certificate of Final Tax Withheld at Source (BIR Form No. 2304 and 2306, respectively).

- Further, in case a mode or submission facility will be used by the taxpayer for the submission of these forms, the file format, naming conventions and other requirements of revenue issuances governing the selected mode or facility shall be strictly complied with. Hence, if the DVD-R or the USB shall be used, the requirements of RR No. 2-2015 shall be complied with. In the case of the eAFS System, the provisions of RMC Nos. 49-2020, 82-2020 and 44-2021 shall be observed instead.

- Furthermore, while taxpayers are allowed to use any of these modes in any given period, they are prohibited to use multiple modes/facilities in one given period of submission. Only one mode or facility shall be used in the submission of both Certificates.

- The provisions of this Circular shall take effect immediately.

RMC No. 118-2021 was issued to intensify the campaign of the BIR against illicit tobacco products.

RMC No. 118-2021 dated 10 December 2021

- For the information and guidance of all internal revenue officials, employees and others concerned, attached with the issuance is Annex "A" which contains the list of Registered Manufacturers/Importers/Exporters with the Corresponding Product Brands/Variants of Cigarettes, Heated Tobacco and Vapor Products reflecting the following product category:

  1. Locally Produced Cigarettes for Domestic Consumption;
  2. Imported Cigarette Products;
  3. Local Manufacturers of Cigarette Products for Export;

4. PEZA Registered Manufacturers of Cigarette Products;
5. Registered Importer of Heated Tobacco Products; and
6. Taxpayer-Importer of Vapor Products.

- Any product not included in the list shall be considered as unauthorized/ illicit subject to seizure/apprehension in accordance with existing rules and regulations.

- Manufacturers, Importers and Exporters are required to register new products before its launching in the market. Newly registered products will be included in the updated list of products in the BIR website within 30 days from the date of registration.

RMC No. 119-2021 circularizes the availability of the revised BIR Forms No. 1707 and 1707-A (version April 2021) due to the implementation of the CREATE Act.

RMC No. 119-2021 dated 10 December 2021

Form No.	Description
1707 **(Annex "A")**	Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)
1707-A **(Annex "B")**	Annual Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)

- The revised manual returns are already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Income Tax Return.

- Under the RMC, the revised forms are not yet available in the eBIR Forms, thus, manual filers and eBIR Forms filers shall download the PDF version of the forms.

- The RMC likewise provides for the manner of payment, either manual (through AABs) or online payment (through the listed online portals).

- Awaiting the availability of returns in the Offline eBIR Forms Package, taxpayer who will pay online shall file the return manually to the RDO having jurisdiction over the place where the seller/transferor is required to register.

- In case of "No Payment Return", taxpayer shall file the return to the RDO having jurisdiction over the place where the seller/transferor is required to register.

RMC No. 120-2021 circularizes the Amendments to Rule 2, Sections 4, 5 and 8; Rule 3 Section 3; Rule 17 Section 2, and Rule 18 Section 5, and Addition of a New Rule 18 Section 6 of the Implementing Rules and Regulations (IRR) of Title XIII of Republic Act (RA) No. 8424 (National Internal Revenue Code of 1997), as amended by the CREATE Act.

RMC No. 120-2021 dated 13 December 2021

Rule 2, Sections 4, 5 and 8 of the CREATE IRR is amended to read as follows:

Sections	Implemented/Amended Provisions
RULE 2. Tax and Duty Incentives.	
SECTION 4. Customs Duty Exemption on Importation of Capital Equipment, Raw Materials, Spare Parts, or Accessories.	***Registered export and domestic market enterprises shall enjoy exemption from customs duties on their*** importation of capital equipment, raw materials, spare parts, and accessories ***for their registered project or activity for a maximum period of seventeen (17) years and twelve (12) years from the date of registration, respectively, unless otherwise extended under the SIPP;***

Sections	Implemented/Amended Provisions
SECTION. 5. Value-added Tax (VAT) zero-rating and exemption.	***Value-added Tax (VAT) zero-rating and exemption*** - The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise, for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP. The ***direct and exclusive use for the registered project or activity*** refers to raw materials, inventories, supplies, equipment, goods, packaging materials, services including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out; Provided, That the VAT zero-rating on local purchases shall be granted upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.
SECTION 8. Taxation after the expiration of the period of availment of incentives.	All registered business enterprises shall pay all applicable taxes at the regular rates under the Code and other laws after the expiration of the period of incentives of their registered project or activity, ***unless otherwise provided in these rules."***
RULE 3. Qualified expansion, entirely new project, or existing registered projects or activities.	
SECTION 3. Qualified expansion, entirely new project, or existing registered projects or activities.	Qualified expansion projects or activities defined under Rule 1, Section 4(U), may be granted three (3) ***years ITH followed by the enhanced deductions or SCIT, as applicable. the expansion project or activity may also be entitled to duty exemption, vat exemption on importation and vat zero rating on local purchases under Rule 2, Sections 4 and 5, respectively;*** Provided, that the application for tax incentives for a qualified expansion project or activity shall be approved by the FIRB or concerned IPA, as the case may be, based on the amount of investment capital of the expansion project or activity under Rule 5, Section 1.

Sections	Implemented/Amended Provisions
RULE 17. Transitory and Miscellaneous Provisions.	
SECTION 2. Entitlement to duty exemption on importation of capital equipment, raw materials, spare parts or accessories.	Existing RBEs with valid Certificate of Authority to Import (CAI) or Admission Entry whose capital equipment, raw materials, spare parts or accessories were ordered, as reflected in the date of the purchase order or on the date of the opening of the corresponding letters of credit; or loaded, as reflected in the bill of lading date; or are still in transit during the effectivity of Executive Order 85, Series of 2019, shall qualify for the duty exemption until the expiration of the CAI/ Admission Entry.
RULE 18. Investments prior to the effectivity of the Act.	
SECTION 5. Non-income related tax incentives.	All registered ***<u>export and domestic market</u>*** enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2 and 3 of this Rule, may continue to enjoy the duty exemption, ***<u>VAT exemption on importation, and vat zero-rating on local purchases as provided in their respective ipa registrations; provided, that the duty exemption</u>***, VAT exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and services directly ***<u>attributable to</u>*** and exclusively used in the registered project or activity ***<u>of said registered</u>*** export enterprises ***<u>located inside the ecozones and freeports until the expiration of the transitory period; provided, further, that importation of capital equipment, spare parts, and accessories by existing export enterprises and domestic market enterprises registered with the BOI prior to the effectivity of the act shall continue to be subject to duty exemption for a period of five (5) years from date of registration.</u>***
<u>SECTION 6. Transitory Rules For Offshore Gaming Licensees And Accredited Service Providers.</u>	***<u>Notwithstanding the provisions of republic act no. 11590, an offshore gaming licensee or an accredited service provider defined under sections 22 (il) and 27 (g) of the code, as amended, duly registered with, and enjoying incentives granted by an IPA under its charter prior to the effectivity of this Act, shall continue to enjoy said incentives until the expiration of the transitory period in section 311 of the code, as implemented by sections 1, 2, and 3 of this rule, or the expiry of the license or accreditation of the registered enterprise, whichever comes earlier; provided that, said offshore gaming licensees and accredited service providers shall thereafter be subject to the applicable taxes under Republic Act no. 11590 and its Implementing Rules and Regulations.</u>***

All existing rules and regulations or parts thereof which are inconsistent with the provisions of the IRR are amended accordingly.

RMC No. 121-2021 clarifies the taxability of the interest paid by cooperatives to its member's deposit or fixed deposits otherwise known as share capital.

RMC No. 121-2021 dated 14 December 2021

- Member's deposit refers to savings and time deposits of both regular and associate Members while share capital refers to member's paid-up capital.

- Based on RMC No. 12-2010 which circularizes the full text of joint rules and regulations implementing Articles 60, 61, and 144 of RA No. 9520, otherwise known as the Philippine Cooperative Code of 2008, members of the cooperative are not liable to pay any tax and fee on the interest earned on member's deposits and fixed deposits (share capital). Hence, cooperatives are also not liable to withhold tax on the aforesaid interest payments to members.

RMC No. 122-2021 clarifies the tax treatment of terminal fees charge to airline ticket at the point of sale.

RMC No. 122-2021 issued on 14 December 2021

- This Circular was issued to standardizes the tax treatment of integrating the Domestic Passenger Service Charge (DSPC) and International Passenger Service Charge (ISPC), commonly referred to as terminal fees, into airline tickets at the point of sale.

- The provisions of RMC No. 34-2012 shall also govern the invoicing and recording of integrated IPSC in the books of airline companies and airport authorities. Applying the guidelines laid down in the said RMC, the following are the rules for IPSC collected by Airline Company for Airport Authority:

  1. **Collection of IPSC from passengers**

     - The Domestic Airline Companies shall collect the IPSC from passengers and shall include the IPSC in the Official Receipt (OR) to be issued by the Airline Company to the passenger. Details of the VATable and VAT exempt components of IPSC, which shall be separately reflected in the OR, are presented in the illustration below:

     - Assume that the IPSC amounts to Php 550.00 broken down as follows:

Details	Amount
Share of Airport Authority	Php 390.00
P.D. No. 1957 (Bureau of Treasury)	100.00
Aviation Security Fee (E.O. No. 30 of 1998)	60.00

     - VAT treatment of the above breakdown are as follows:

Details	Amount	VAT Remarks
Share of the Airport Authority in the IPSC (exclusive of VAT) *A = P390.00 / 112%*	Php 348.21	Subject to 12% VAT
Share of the Airport Authority in the IPSC (VAT component) *B = P348.21 x 12% VAT*	41.79	Amount of VAT included as part of the Share of Airport Authority
Aviation Security Fee (E.O. No. 30 of 1998)	60	VAT Exempt
Other fees (P.D. 1957)	100	VAT Exempt
Total IPSC	**Php 550.00**	

- A domestic airline company that is subject to VAT, or an international airline company that is a resident foreign corporation (RFC) and subject to VAT on service fees, shall record the collection of IPSC as follows:

Cash	--	550.00
	IPSC – Share of Airport Authority -------------------	348.21
	IPSC – Due to National Govt. PD 1957 ------------	100.00
	IPSC – Aviation Security Fee --------------------------	60.00
	Output VAT --	41.79

- The accounts to record the IPSC (Share of Airport Authority, Aviation Security Fee and fees under PD 1957) may be shown in the financial statements as other income/expense.

2. **Remittance of IPSC by Airline Company to Airport Authority**

- The IPSC collected by the Airline Company shall be paid to the Airport Authority, which in turn, shall issue an OR to the Airline Company. The OR shall indicate the full amount of the IPSC.

- Following the same facts as in the previous illustration, a domestic airline company that is subject to VAT, or an international airline company that is subject to VAT on service fees, shall record the remittance of IPSC as follows:

IPSC – Share of Airport Authority ----------------------------		348.21
IPSC – Due to National Govt. PD 1957 ----------------------		100.00
IPSC – Aviation Security Fee -----------------------------------		60.00
Output VAT --		41.79
	Cash ---	550.00

- On the other hand, the Airport Authority shall record the receipt of IPSC from a domestic airline company, which is subject to VAT, or an international airline company that is subject to VAT on services fees, as follows:

Cash	--	550.00
	IPSC – Share of Airport Authority -------------------	348.21
	IPSC – Due to National Govt. PD 1957 ------------	100.00
	IPSC – Aviation Security Fee --------------------------	60.00
	Output VAT --	41.79

3. **Payment of Service Fees by Airport Authority to Airline Company**

- Payment of service fees by Airport Authority to Airline Company shall be governed by the rules on government money payments and be subject to Creditable Withholding VAT (WVAT) at the rate of 5% and Creditable Withholding Tax (CWT) of 2% of gross payments. The Airline Company shall issue a VAT OR to acknowledge receipt of the service fees from the Airport Authority.

- However, payment of service fees by Airport Authority to international Airline Company shall be treated as other income subject to Corporate Income Tax (CIT).

- The Airport Authority shall remit the 5% creditable WVAT and the 2% CWT on payment for service fees and issue the corresponding Certificate of Creditable Tax Withheld at source (i.e., BIR Form No. 2307) in the name of the domestic airline company or the international company that is an RFC, as income recipient.

- In the previous illustration, assuming that the agreed service fees to be paid by the airport authority to the airline company is 2.95% of the IPSC, a domestic airline company that is subject to VAT, or to an international airline company that is an RFC and subject to VAT on service fees, shall record the receipt of service fees as follows:

Cash	15.2110
Creditable Withholding Tax – Income (Service fees x 2%)	0.2897 *
Creditable Withholding Tax – VAT (Service fees x 5%)	0.7243
Service Income (550 / 1.12 x 2.95%)	14.4866
Output VAT (Service fees x 12%)	41.79

* *This represents the 2% creditable withholding tax on persons residing in the Philippines, pursuant to Section 2.57.2 (N) of RR No. 2-98, as amended by Section 2.57.2 (J) of RR No. 11-2018, on the income tax on service fees imposed under Section 4.4 of RR No. 15-2013.*

- Concurrently, the Airport Authority shall record the payment of service fees to a domestic airline company that is subject to VAT, or an international airline company that is an RFC and subject to VAT on the service fees, as follow:

Service fees	14.4866
Input VAT	1.7384
Cash	15.2110
Expanded Withholding Tax – Income	0.2897
Expanded Withholding Tax – VAT	0.7243

- If, however, the service fees are earned by an international airline company that is a non-resident foreign corporation (NRFC) and subject to VAT on the service fees, the receipt of service fees shall be recorded in its books as follows:

Cash	11.8790
Final Withholding Tax – Income (Service fees x 25%)	3.6217 **
Creditable Withholding Tax – VAT (Service fees x 5%)	0.7243 ***
Service Income (550 / 1.12 x 2.95%)	14.4866
Output VAT (Service fees x 12%)	1.7384

** *This represents the 25% Final Tax Withheld, pursuant to Section 2.57 .1 (I) of RR No. 2-98, amended by Republic Act No. 11534, on the income tax imposed under Section 4.4 of No. 15-2013.*

*** *This is pursuant to Section 114 (C) of the Tax Code, as amended.*

- While the Airport Authority shall record the payment of service fees to an international airline company that is a non-resident foreign corporation and subject to VAT on the service fees, as follows:

Service fees	14.4866
Input VAT	1.7384
Cash	11.8790
Final Withholding Tax – Income	3.6217
Expanded Withholding Tax – VAT	0.7243

- Section 6 of RR No. 15-2013 to the contrary notwithstanding, International Carriers exempt under Section 109 of the Tax Code shall be allowed to register for VAT purposes in relation to IPSC, being unrelated to the transport of passengers and cargo.

- Moreover, the collection of taxes on IPSC specified under the RMC should be treated independently from the Gross Philippines Billings (GPB) Tax and the 3% Common Carrier's Tax, as the GPB refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, while the Percentage Tax on International Carriers in Section 118 pertains to gross receipts derived from transport of cargo from the Philippines to another.

Considering that the IPSC is a service charge for services performed within the Philippines, then justifiably, it should be treated independently from the taxes imposed on the mentioned revenue from carriage of persons, excess baggage, cargo, and mail originating from the Philippines. Should the airline company opt to remit the IPSC to the Airport Authority net of the Service Fees charged, the same rules as above shall apply. However, to comply with the withholding requirements, the tax to be withheld on the service fees, whether CVAT, CWT, or Final Withholding Tax, shall be paid back to the Airport Authority for remittance to the BIR.

RMC No. 123-21 publishes the full text of letter from Undersecretary Charade B. Mercado-Grande of the Department of Health endorsing updates to the "List of VAT-Exempt Drugs and Vaccines Prescribed and Directly Used for COVID-19 Treatment" under the CREATE Act.

RMC No. 123-2021 issued on 14 December 2021

- In the letter, it is clarified that if the salt form of the medicines under the COVID-19 VAT Exempt List is not specified, it signifies that all the salt forms of the particular drug is covered by the VAT exemption.

- The full list of VAT-exempt drugs and products under the said RMC can be accessed via the BIR website RMC No. 123-2021 Attachment.pdf (bir.gov.ph).

RMC 124-21 publishes the full text of the letter dated 8 November 2021 from Dr. Rolando Enrique D. Domingo, Director General of the Food and Drug Administration (FDA) and copy of the updates to the "List of VAT-Exempt Products under Republic Act Nos. 11534, and as implemented under Section 4.109(1)(B)(aa) of the Revenue Regulations No. 4-2021.

RMC No. 124-2021 issued on 23 November 2021

- This Circular updates and supplements RMC No. 81-2021, which published the consolidated list of VAT-exempt products and has become the controlling list insofar as the VAT exemption of items under Sections 109(1)(AA) and 109(1)(BB) of the Tax Code of 1997, as amended, is concerned.

- The full list of VAT-exempt drugs and products under the said Sections of the Tax Code can be accessed via List of VAT-exempt drugs and products under RMC No. 124-2021.

Banks and Other Financial Institutions

Expansion of Eligible Participants for Monetary Operations and for BSP Securities in the Secondary Market

Circular No. 1130, series of 2021 expands the eligible participants for monetary operations and for BSP securities in the secondary market.

Circular No. 1130, series of 2021 dated 23 November 2021

The Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) are amended to include digital banks as eligible participants for BSP's monetary operations, such as:

- Reverse repurchase agreements with the BSP – Reverse Repurchase Agreement refers to the BSP's monetary instrument where the BSP sells government securities with a commitment to buy them back at a later date.
- Borrowings from the Overnight Lending Facility (OLF) of the BSP – The OLF is a BSP standing facility which allows counterparties to obtain overnight liquidity from the BSP on an open-volume basis against eligible collateral in order to cover short-term liquidity requirements.
- Overnight deposits with the BSP – The Overnight Deposit Facility is a BSP standing facility, which allows banks and QBs to place overnight deposits with the BSP.
- BSP Term Deposit Facility (TDF) – The TDF is a key liquidity absorption facility of the BSP used to withdraw liquidity from the system in bulk.
- BSP Securities: (Bills and Bonds) – The issuance of BSP Securities is part of the monetary operations of the BSP to manage short-term liquidity in the financial system and guide market interest rates.

Open Finance Oversight Committee Transition Group

Circular Letter No. CL-2021-090 enumerates the functions of the Open Finance Oversight Committee Transition Group (OFOC TG).

Circular Letter No. CL-2021-090 dated 18 November 2021

The Monetary Board recognized the OFOC TG.

- OFOC TG shall act as the interim governing body to lead the constitution of the formal OFOC and facilitate the formulation of policies and standards in relation to the adoption of the Open Finance Framework pursuant to BSP Circular No. 1122, Series of 2021.
- BSP shall appoint the members of the OFOC TG.
- OFOC TG shall carry out its activities until such period that the formal OFOC has been established but shall not exceed the maximum term of two (2) years from its inception.
- OFOC TG shall be supported by BSP through the Technology Risk and Innovation Supervision Department (TRISD) to plan and execute all required activities.

Circular Letter No. CL-2021-098 disseminates the list of uncooperative covered persons under the AMLA.

Anti-Money Laundering Council (AMLC) Advisory dated 16 November 2021 on the List of Uncooperative Covered Persons under the Anti-Money Laundering Act of 2001 (AMLA), as amended

Circular Letter No. CL-2021-098 dated 7 December 2021

This is to disseminate the latest AMLC advisory on the updated list of uncooperative covered persons under the AMLA, as amended:

- Philippine Offshore Gaming Operators (POGOs):

    1. MG Universal Link Limited
    2. Inner Strong Limited
    3. Smarc Group International Limited

AMLC resolved to revoke the registration of the above covered persons who failed or refused to cooperate with the AMLC in the conduct of its compliance checking.

The public is hereby advised to be cautious and to observe appropriate protocols in dealing with these uncooperative covered persons.

Memorandum Order No. M-2021-064 states that the application for new EMI licenses is closed for two years.

Recalibrated Policy Measures in Handling Application for an Electronic Money Issuer – Others (EMI-Others) License

Memorandum Order No. M-2021-064 dated 17 November 2021

Starting 16 December 2021, the regular application window for new Electronic Money Issuer-Others (EMI Others) licenses for non-bank financial institutions shall be closed for two years.

- All applications received by the BSP until 15 December 2021 will be processed on a first-come, first-served basis, and will be assessed for completeness and sufficiency of documentation/information submitted as well as compliance with the licensing criteria to operate as a non-bank EMI (EMI-Others) based on Stage 3 requirements.

- Applications with noted deficiencies will be returned and considered closed.

New non-bank EMI applicants with proposal involving (i) new business models, (ii) unserved, targeted niches, and/or (iii) new technologies may request for exception under the Test-and-Learn/Regulatory Sandbox Framework.

- Specific guidelines shall be covered by a separate memorandum.

- BSP may limit the total number of entities that will avail of the test and learn pathway.

Memorandum Order No. M-2021-065 states that the Monetary Board approved the adoption of temporary regulatory relief for banks that offer BDAs.

Temporary Regulatory Relief for Banks that Offer Basic Deposit Accounts

Memorandum Order No. M-2021-065 dated 23 November 2021

The temporary relief measures are as follows:

- Non-presentation of identification cards (IDs) for BDA for the year 2022 subject to the following conditions:

  1. The customer shall submit duly signed certification, either in physical or electronic form, which need not be notarized, that he/she has no valid ID.

  2. The customer's account activities shall be subject to ongoing monitoring by the bank.

     - Any suspicious transactions shall be reported to the Anti-Money Laundering Council within the prescribed period.

  3. Should the depositor exceed the Php 50,000 maximum balance, the bank should initiate measures to convert the account into a regular deposit account.

     - Existing Know-Your-Customer rules on regular deposit accounts will apply.

- Waiver of BSP fees related to the application of Advanced Electronic Payment and Financial Services (EPFS) for the year 2022 for banks which intend to use the said service to support the offering of BDA.

- Reduction in the Annual Supervisory Fees of banks for the years 2022 and 2023 by reducing the bank's Average Assessable Assets by the average amount of BDA maintained by the bank in the preceding year (i.e., based on the bank's BDA balance as of quarter-end reporting period and adjusted by a multiplier of 5).

Memorandum Order No. M-2021-066 sets guidelines to facilitate the use of the data entry template.

Guidelines on The Use of Data Entry Templates For Applications For Issuance of Certificate of Authority To Register Amendments to Articles of Incorporation/ Articles of Cooperation And By-Laws

Memorandum Order No. M-2021-066 dated 3 December 2021

The following guidelines are issued to facilitate the use of the data entry template (DET) to promote efficiency in processing applications for issuance of Certificate of Authority (COA) to register amendments of Articles of Incorporation (AOI) / Articles of Cooperation (AOC) and By-Laws (BL):

- All BSP Supervised Financial Institutions (BSFIs) should download and use the corresponding files of the prescribed Data Entry Templates from http://www.bsp.gov.ph/ses/reporting_templates.

- The scanned copy of the documents should be electronically submitted to fssmail@bsp.gov.ph, copy furnished the appropriate head of the supervising department in compliance with BSP Memorandum Circular No. M-2021-036 dated 28 June 2021.

- Before submitting the application for the issuance of COA, BFSIs must comply first with the requirement on the Web-Based Self-Assessment Questionnaire for Applications for the Grant of a License or Special Authority.

Bureau of Customs

Supplemental Guidelines on the Issuance, Implementation and Termination of a Letter of Authority (LOA)

OCOM Memorandum No. 162-2021 provides for additional guidelines in the process for issuance and enforcement of BOC LOAs which may be initiated upon receipt of derogatory information on imported goods.

OCOM Memorandum No. 162-2021 dated 22 November 2021

- A LOA is issued based on a derogatory information gathered and/or received by the BOC that imported goods, which are probably smuggled, regulated, prohibited, or restricted, are being openly offered for sale or kept in a particular store, stalls, exhibition places, warehouses, and/or enclosures such places not being used principally as a dwelling house.

- The duration of an LOA, from its implementation to its termination, should not be more than 30 days. Any office/unit causing unnecessary delays in the resolution of an LOA shall be held liable for administrative offense(s).

- Some salient guidelines include the following:

  1. Upon receipt of above-mentioned information, the BOC office concerned shall prepare a Disposition Form, with attached draft LOA and Mission Order (MO), discussing the derogatory information and the necessity of subjecting the same to the visitorial power of the Commissioner of Customs.

  2. The draft LOA and MO shall identify the composition of the implementing team and the place where the same will be exercised. The implementing team/unit shall be accompanied by the following:

     - Two or more customs examiners, who shall be in charge of the inventory of the goods;
     - Other deputized members of the National Law Enforcement Agencies; and
     - Any duly designated member of the Legal Service.

  3. Once approved by the Commissioner, the LOA and MO shall be forwarded to the LOA Clearing House for recordation and monitoring purposes. Thereafter, the same shall be given to the requesting office/unit.

  4. The LOA and MO must be shown or exhibited immediately at the start of the exercise thereof. The implementing team shall enter the subject premises in the presence of the lawful occupant or any person in possession of the goods, or in their absence, any two witnesses who are residents of the same locality, or the barangay officials or any representative from the building management or other responsible officers.

  5. If the subject goods are of foreign origin, the following protocols shall be observed:

     - Prohibited goods should be confiscated/seized;
     - Regulated or restricted goods with no import permits/clearances and/or proof of payment of duties and/or taxes should immediately be accounted for and be recommended for issuance of Warrant of Seizure and Detention (WSD); and
     - Freely importable goods with no proof of payment of duties and/or taxes adduced within 15 calendar days from the service of the LOA, should likewise be recommended for the issuance of WSD.

6. If the subject goods are found to be of local origin, or if the owner, occupant, or person in possession of the goods was able to present within 15 days from service of the LOA the required import documents evidencing payment of duties and taxes, the implementing team shall make a report to the Commissioner with a recommendation for termination of the LOA and MO.

7. The subject imported goods shall be deemed under customs custody and the premises where the goods are stored may be padlocked or sealed by the implementing team if the owner, occupant or person in possession refuses to cooperate and execute and Undertaking stating that the goods will not be removed, sold or disposed of without prior authority from the BOC.

8. Photos taken in the implementation of the LOA and during the conduct of an inventory must be geotagged and shall be attached to every report that will be submitted. The member of the implementing team who took the photo must duly certify the same.

- This OCOM Memorandum is for immediate and strict implementation

Clarifying the List of Imported Articles that No Longer Require the Issuance of Authority to Release Imported Goods (ATRIG) prior to Release of Release from the Custody of the BOC

CMC No. 261-2021 circularizes the provisions of BIR RMC No. 112-2021 which clarifies that the issuance of an ATRIG shall no longer be necessary for the importation of perishable agricultural products.

CMC No. 261-2021 dated 22 November 2021

- Perishable agricultural products include unprocessed vegetable, fruits and nuts which are exempt from VAT pursuant to Sec. 109 (1) (A) of the tax Code, as amended.

- Pending resolution on the taxability of certain imported articles and the issuance of clear policies and procedures on the issuance of certifications from concerned regulatory government agencies, the appropriate ATRIG shall still be secured from the BIR on the following articles until such time that a supplemental Circular expanding the coverage of the above list shall have been issued:

  1. Feed and feed ingredient;
  2. Fertilizers; and
  3. Articles subject to excise tax as well as on the raw materials, apparatus, or mechanical contrivances, and equipment specially used for the manufacture thereof.

(Editor's Note: RMC No. 112-2021 is yet to be published outside of the BIR website)

Updated List of Regulated and Prohibited Export/Import Commodities under the Manual of Regulations on Foreign Exchange Transactions (FX Manual) as amended

CMC No. 266-2021 circularizes a revised list of regulated and prohibited export/import commodities under the BSP Foreign Exchange Transactions Manual, as amended, which covers commodities involving the BSP.

CMC No. 266-2021 dated 15 December 2021

- The revised list includes the following:

Import	Export
A. Regulated Commodities	
Legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding Php 50,000.	
Coin blank essentially of gold, steel, copper, nickel, zinc, tin, aluminum, brass, bronze, all with diameter of less than 30.00 mm and weight of less than 11.50 grams per piece; Coin blank essentially of silver with diameter of 36.8 mm +/- 0.05 mm and weight of 28.28 grams per piece; Nordic gold coin metal with diameter of 33.35 mm +/- 0.05 mm and weight of 15 grams per piece	
Import	**Export**
A. Prohibited Commodities	
Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloys	
Unissued Philippine banknotes, except those authorized by the BSP	Gold from small scale mining, including panned gold

- Commodities that are not under the BSP's purview shall be covered by applicable laws, rules, and regulations and governed by the respective trade regulatory government agencies (TRGAs)

- The BSP Foreign Exchange Transactions Manual (BSP Circular No. 1124) became effective last 13 September 2021

CMO No. 37-2021 mandates the use of geotagging mobile applications in taking photos and videos, using smartphones, in the exercise of Customs police authority and other aspects of operations and shall complement the use of Body-Worn Cameras or Alternative Recording Devices under CMO No. 33-2021.

Mandatory Geotagging of Photos and Videos Taken by Customs Personnel in the Exercise of Customs Police Authority and other Customs Operations

CMO No. 37-2021 dated 13 December 2021

- Geotagging is the process of adding geographical information to various media in the form of metadata. The metadata usually consists of coordinates like latitude and longitude, but may even include bearing, altitude, distance and place names.

- The use of geotagging mobile applications in taking photos and videos using smartphones, to complement the Body-Worn Camera or Alternative Recording Device, of customs officers shall be mandatory under the following instances:

  1. Approved controlled delivery operation;

     - Under Section 3.4 of Customs Administrative Order (CAO) No. 03-2019, controlled delivery is defined as the investigative technique of allowing an unlawful or suspect consignment of any prohibited or regulated articles defined under the CMTA and other laws enforced by the BOC, or property believed to be derived directly or indirectly from any customs-related offense, to enter into, pass through or exit out of the country under the supervision of an authorized officer, with a view to gather evidence aimed at identifying any person involved in smuggling-related offences to facilitate the prosecution of the offender.

  2. Boarding formalities;
  3. Conduct of auction sales;
  4. Destruction or condemnation of goods, including the transport thereof to the designated facility;
  5. Electronic Tracking of Containerized Cargo (E-TRACC)-related operations, particularly the conduct of investigation upon report of violation of E-TRACC rules and regulations;
  6. Fuel marking operations;
  7. Guarding duty at customs import exit gates for containers/cargoes, if applicable;
  8. Hot pursuit;
  9. Inspection of consignees' offices;
  10. Non-intrusive examination of goods;
  11. Physical examination of goods within and/or outside of customs zone;
  12. Search of persons arriving from foreign countries;
  13. Service of Letter of Authority;
  14. Search of vehicles, other carriers, persons, and animals;
  15. Search on vessels or aircrafts and persons or goods conveyed therein; or
  16. Covert and overt operations of the BOC Intelligence Group and Enforcement Group.

- Customs Officers and employees involved in the conduct of the covered operations shall download a geotagging mobile application that must show the following information, but not limited to:

  1. Location address;
  2. Latitude;
  3. Longitude; and
  4. Date and Time.

- All geotagged photos and videos taken shall also be submitted to the designated Data Custodian within 24 hours after the completion of the operation.

- Only geotagged photos, videos, and those recorded by Body-Worn Cameras or Alternative Recording Devices shall be accepted as proof of conduct of the above-mentioned operations. In case of Alternative Recording Devices, the same must be geotagged.

(Editor's Note: CMO No. 37-2021 is yet to be published outside of the BOC website)

PEZA Update

PEZA MC No. 2021-071 circularizes Fiscal Incentives Review Board (FIRB) Resolution No. 23-21, which formally denied the appeal of PEZA on behalf of its IT-registered enterprises to reinstate the basis of the threshold of the work from home (WFH) arrangement to revenues instead of workforce as provided under FIRB Resolution No. 19-21.

PEZA MC No. 2021-071 dated 1 December 2021

The decision was based on the strategy of the government to gradually and safely open the economy and the IATF Guidelines and DTI Advisory 21-09, which authorize BPO companies and export enterprises to operate 100% onsite during all levels of community quarantine.

Note also the following clarifications issued by the FIRB in the resolution:

- The **total workforce shall refer to the employees that are directly or indirectly engaged in the registered project or activity of the RBEs**, but excludes third-party contractors rendering janitorial and security services and other similar services.

- The export revenues to be maintained shall refer to the revenues arising from the registered project or activity as specified in the terms and conditions of registration.

- The **non-compliance with the conditions** prescribed under FIRB Resolution No. 19-21 **shall be meted the suspension of the income tax incentive applied on the revenue corresponding to the month/s of non-compliance.**

The penalty provision under FIRB Resolution No. 19-21 shall be imposed on any violation committed by the enterprises **after** 12 September 2021.

However, as to the manner the penalty will be imposed particularly the payment of the regular corporate income tax (RCIT) for the month/s of non-compliance, the PEZA is still verifying this with the FIRB and the Bureau of Internal Revenue (BIR), and a supplemental MC will be issued for this matter.

SEC Issuances

SEC Notices

The SEC circulated the draft Memorandum Circular on the Guidelines on the Registration and Licensing of Online Lending Platforms, for comments on this to be submitted within 15 days.

SEC Notice dated 18 November 2021

The SEC circulated draft Guidelines on the Registration and Licensing of Online Lending Platforms (OLPs). Comments were asked to be submitted within 15 days from the Notice. The Guidelines will cover duly registered financing companies (FCs) under the Financing Company Act of 1998 and duly registered lending companies (LCs) under the Lending Company Regulation Act of 2007, whether existing or duly

registered who do not yet own/operate/utilize OLPs or are not currently engaged in FinTech as of the date of effectivity of the Guidelines but wish to deliver services and products through OLPs and FinTech. For existing FCs and LCs with OLPs or are otherwise already engaged in FinTech, the transitory provision of the draft provides for a period of one hundred eighty (180) days from the effectivity of the circular within which to apply for an OLP license.

The SEC released a notice about continuing to operate at limited capacity due to the COVID-19 pandemic.

SEC Notice dated 09 December 2021

The SEC Main Office, Satellite Offices, and Extension Offices will continue to operate at limited capacity and will implement alternative work arrangements while quarantine measures remain in place due to the COVID-19 pandemic. The SEC released a list of email addresses and contact numbers for queries and other concerns.

SEC Memorandun Circulars

SEC M.C. No. 12, s. 2021 implements the revised rules for the implementation of the SEC Oversight Assurance Review (SOAR) Inspection Program.

SEC M.C. No. 12, s. 2021 dated 09 December 2021

The SEC implements the revised rules for the implementation of the SEC Oversight Assurance Review (SOAR) Inspection Program, amending SEC M.C. No. 9, s. 2017.

Under the SOAR Inspection Program, the SEC conducts an on-site review of the quality control policies and procedures of accredited firms that audit companies with equity or debt securities listed in an Exchange and reviews portions of the audit work on selected audit engagements.

Included in the changes are:

- A provision that in certain situations, the Commission may select more than one of the firm's audit engagements for review;
- Clarification on the standards of quality control;
- Revision of the frequency of inspection depending on the relative size of the audited publicly listed companies in terms of market capitalization;
- A provision for an alternative (virtual) mode of inspection;
- More detailed description of the SOAR inspection process, from the selection and notification of the firm and audit engagements to be reviewed and forms to be submitted;
- The inclusion of a classification of inspection findings, namely: (1) opportunities for improvements or enhancements, and (2) significant deficiencies;
- Revision of the timeline of steps upon completion of the inspection;
- Revision of the mediation process;
- A provision for the publication of inspection findings on the SEC website; and
- The addition of downgrading a firm's SEC accreditation level as a possible sanction for violations identified during inspection.

These revised rules were published in the Manila Bulletin and Business Mirror on 24 December 2021 and took effect on 1 January 2022.

SEC M.C. No. 13, s. 2021 mandates public companies and registered issuers to submit an Annual Corporate Governance Report.

SEC M.C. No. 13, s. 2021 dated 31 December 2021

The SEC required all covered companies to submit an Annual Corporate Governance Report (ACGR) to facilitate disclosure of the compliance of public companies (PCs) and registered issuers (RIs) with the Code of Corporate Governance for PCs and RIs.

All covered companies are required to submit two copies of a fully accomplished ACGR on or before 30 June of the following year for every year that the company qualifies as a PC or RI. At least one complete copy of the ACGR filed with the Commission shall be duly notarized and shall bear the original and manual signatures of the required signatories.

PCs and RIs that are listed in the Philippine Stock Exchange shall be excluded from the coverage of this MC. Publicly listed PCs and RIs shall instead submit an Integrated Annual Corporate Governance Report in accordance with SEC M.C. No. 15, s. 2017.

PCs and RIs shall no longer be required to comply with Sections 15 and 16 of SEC M.C. No. 3, s. 2007[1] and SEC M.C. No. 36, s. 2020[2].

This M.C. took effect on 19 January 2022, 15 days after its publication in the Philippine Daily Inquirer and The Philippine Star on 4 January 2022.

Court of Tax Appeals Cases

Refund/Issuance of Tax Credit

Commissioner of Internal Revenue vs. MSCI Hong Kong Limited
CTA *En Banc* (EB) No. 2258 (CTA Case No. 9661) promulgated 15 December 2021

General allegations made by a party cannot overturn the findings made by Court in Division which were made through circumspect examination of the pieces of evidence adduced during trial.

Facts:

Company M filed an application for VAT refund which was partially denied by the BIR. It then filed a Petition for Review before the CTA. The CTA Division partially granted Company M's judicial claim for VAT refund.

The BIR then filed a Motion for Reconsideration on the CTA Division's decision which was denied by the same division. Thus, this petition.

The BIR alleged that Company M failed to prove the second requisite for entitlement to refund, i.e., that the recipient of its services must be a non-resident foreign corporation not engaged in trade or business in the Philippines. BIR is claiming that Company M rendered services to its parent company (i.e., Company A.) and it failed to prove that it is not wholly owned by Company A. On the other hand, Company M is claiming that it rendered services not to its parent company in Hong Kong, but to Company A and Company B, which are its affiliates.

Issue:

Is Company M entitled to its claim for refund?

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[1] Submission of a certificate of compliance with the Manual of Corporate Governance and submission of a certificate of attendance of directors in meetings of the board of directors

[2] Submission of the 2020 Compliance Officer's Certification

Ruling:

Yes. Company M has sufficiently proven that its clients, Company A and Company B, are not engaged in business in the Philippines. Company M has submitted the following to prove that its clients, Company A and Company B, are not engaged in business in the Philippines: (a) amended and restated Certificate of Incorporation of Company A; (b) amended and re-stated By-Laws of Company A; (c) Certification from the US Internal Revenue certifying that Company A is a US corporation and US resident for tax purposes; (d) Certification of Non-Registration issued by the Philippine SEC stating that Company A is not registered as a corporation in the Philippines; (e) Articles of Association of Company B; and (f) Certificate of Non-Registration issued by the Philippine SEC stating that Company B is not registered as a corporation in the Philippines.

With respect to the BIR's contention that Company A is Company M's parent company and as such, Company M is deemed an instrumentality of Company A, the Court finds the same without basis. Company M has admitted and presented documentary proof that it is the Philippine Branch of Company C, a multinational company organized under the laws of Hong Kong. Company M has presented proof that it is not a subsidiary of Company A, which is established under the laws of Delaware, US. The documents submitted by Company M, when taken together, would show that Company M is a branch (to be precise, an ROHQ) of Company C. Company A and Company C are distinct and separate from each other.

CIR v. New York Bay Phil. Inc.
CTA Case No. 9450 promulgated 24 November 2021

Facts:

This case involves claims for tax credit or refund filed after 11 June 2014 (applicability of RMC 54-2014). Respondent herein, Company A, is a VAT-registered entity. It filed for an administrative claim for its alleged excess and unutilized input VAT for the four quarters of CY 2014 attributable to its zero-rated sales of services (remittance services) in the Philippines for the said four quarters to non-resident foreign corporations not engaged in business in the country. It attached supporting documents and a sworn certification stating that it submitted complete documents for purposes of processing its claim for refund.

Alleging inaction on the part of the CIR, it filed for a petition for review before the Court of Tax Appeals (CTA) division.

Issue:

Is Company A entitled to refund?

Ruling:

Yes. As it now stands, RMC-54 2014 dated 11 June 2014 mandates that:

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed, and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/ claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/ claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.

Based on the foregoing, considering that the administrative claim for refund was filed on 31 March 2016, it means that the reckoning point of the counting of the 120 days is also the date of filing of the said claim. In this case, the CTA Division stated in the assailed Resolution that, "It was established that Company A filed its administrative claim for refund of unutilized input VAT for the four (4) quarters of calendar year 2014 on 31 March 2016, with attached supporting documents. Also accompanying Company A's administrative claim was a Sworn Certification stating that it submitted complete documents for purposes of processing its claim for refund. Thus, from the filing of Company A's administrative claim on 31 March 2016, respondent had 120-days or until 29 July 2016 to decide on the claim. Since respondent failed to act on Company A's claim after the lapse of the 120-day period, Company A had 30 days from 29 July 2016 or until 28 August 2016, within which to elevate its case to the Court via a Petition for Review. Thus, the Court acquired jurisdiction over the instant Petition for Review Seasonably filed on 26 August 2016."

Refund / Issuance of Tax Credit

Commissioner of Internal Revenue vs. Dole Fresh Fruit Company
CTA EB Case No. 2341 (CTA Case No. 9012) promulgated 11 November 2021

Generally, any gain from the sale of shares in a Philippine corporation should be subject to CGT. However, considering that the Philippines has a treaty with the US, capital gains derived by residents of other Contracting States from the disposition of shares or interests in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally of real property interest located in the Philippines.

Facts:

Company A, a corporation organized and existing under the laws of the State of Nevada, United States of America, owns 0.64% of the total shareholdings of Company B. Company B is a corporation organized and existing under Philippine law. On 19 February 2013, Company A sold and transferred to Company C, a Singapore private limited company, all its rights, title, and interests in Company B for a purchase price of Php 105,694,644.

On 4 March 2013, Company A filed an application with the Bureau of Internal Revenue's (BIR) Internal Tax Affairs Division (ITAD) to request confirmation that the transaction is exempt from capital gains tax under the Republic of the Philippines-United States (RP-US) Tax Treaty. However, the CIR contends that the reservation clause under the RP-US Tax Treaty applies to the sale of shares of stocks between Company A and Company C; Company A failed to establish whether the real property interests in Company B are located in the Philippines or outside the Philippines; that Company A failed to establish the actual real property interest of Company B located in the Philippines; and that tax exemptions are to be construed *strictissimi juris* against the petitioner.

Company A countered CIR's contentions stating that that there is no basis for the argument that the reservation clause under the RP-US Treaty applies to the sale of shares of stock; that there is no basis to the CIR's allegation that it failed to establish that Company B's real property interests located in the Philippines are less than 50% of its total assets; and that CIR failed to show that the Court in Division committed reversible error in holding that DFFC is entitled to its refund.

Issue:

Is the capital gains derived from the transfer of Company A's shares of stock exempt from CGT pursuant to RP-US Tax Treaty?

Ruling:

Yes. The sale of Company A's shares is exempt from CGT in the Philippines pursuant to the RP-US Tax Treaty. Under the RP-US Tax Treaty, capital gains from the sale of shares of stock shall be taxable in the state where the alienator is a resident. However, the Reservation Clause provides that such sale may be taxed both by the Philippines and the US if the interest being disposed is in a corporation whose assets consist principally of a real property interest located in that country. On the reverse side, under the RP-US Tax Treaty, the subject capital gains may be exempt from Philippine tax if the interest being disposed is in a corporation whose assets do not consist principally of a real property interest located in the Philippines. In the instant case, it was proven that petitioner Company A is a non-resident foreign corporation, and the shares transferred are of DPI which is a domestic corporation.

This being so, the CTA ruled that it is entitled to refund of the capital gains taxes erroneously paid to and collected by the CIR. Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven. Company A was able to prove that it is entitled to refund. Company A was able to establish by preponderance of evidence the following:

- That it is an entity incorporated and residing in the US;
- That it is not registered either as a corporation or a partnership in the Philippines nor has been issued a license to do business in the Philippines;
- That the real properties of Company B that were sold do not consist of more than 50% of all its assets in the Philippines; and
- That it complied with all the requirements for a claim for refund of erroneously paid taxes.

Commissioner of Internal Revenue vs. Eagle II Holdco, Inc.
CTA EB No. 2286 promulgated 10 November 2021

Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.

Facts:

On 19 July 2011, the Supreme Court (SC) rendered a decision in the case of Commissioner of Internal Revenue v. Filinvest holding, among others, that instructional letters and journal and cash vouchers evidencing advances which Company F extended to its affiliates qualified as loan agreements upon which documentary stamp taxes (DST) may be imposed. Then, on 6 October 2011, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 48-2011, circularizing to all concerned internal revenue officials and employees, relevant excerpts from the decision of the SC in the Filinvest case and enjoining all employees engaged in the audit and review of audit cases "to assess deficiency DST, if warranted, on these kinds of transactions."

On 29 December 2014, Company E received Formal Assessment Notice (FAN) with Assessment Notice No. DS-ELA55300-12-14-1238 and Details of Discrepancies from the BIR for deficiency DST, interest, and fifty percent (50%) surcharge amounting to Php99,581,993.21 on advances from affiliates and related parties pursuant to Section 179 of the NIRC as established in the Filinvest case.

During the pendency of the letter protest, Company E voluntarily paid the deficiency DST including the interest and fifty percent (50%) surcharge without admitting liability.

On 27 July 2017, Company E filed its administrative claim for refund or tax credit, seeking the recovery of the total amount of Php108,025,207.31, representing deficiency DST, interest, and fifty percent (50%) surcharge paid in six installments, the last and final installment of which was made on 31 July 2015.

Due to the failure of the BIR to resolve the administrative claim for refund, Company E filed a Petition for Review on 31 July 2017.

Issue:

Is Company E entitled to the refund/issuance of tax credit certificate representing its allegedly erroneous DST payment including the interest and fifty percent (50%) surcharge?

Ruling:

Yes. The Court in Division can determine and decide for the first time a question not raised at the administrative forum, the provisions of **Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)** are instructive: *"SECTION 1. Rendition of judgment. — x x x In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."* (Emphasis supplied) Clearly, from the foregoing, this Court, whether sitting in Division or *En Banc*, is not bound by the issues specifically raised by the parties but may also rule on related issues not raised that are necessary to achieve an orderly disposition of the case.

BIR argues that the PAN with attached Details of Discrepancies was issued and received by Company E. However, Section 34, Rule 132 of the Revised Rules on Evidence and the case of Sabay are clear that evidence must be formally offered for it to be considered by the courts.

In this case, the CTA agree with the findings of the Court in Division that the records of this case reveal that the PAN was not offered and admitted as an exhibit by both parties. Exhibit "P-3" cannot be used in favor of petitioner because petitioner did not adopt Exhibit "P-3" as his exhibit and did not also offer it as proof of valid issuance of the PAN.

As regards to BIR's argument on the imposition of surcharge and interest, the respondent is not liable to pay interest and surcharge, to wit:

"In an earlier case, the SC held that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.”

An examination of Company E's claim for refund shows that at the time the advances were made from 2008 to 2011, Company E relied on prevailing court decisions to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Petitioner relied on the cases of Filinvest Development Corporation, et al. vs. CIR and CIR vs. Filinvest Development Corporation, et al. Although only the decisions of the SC establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides. Accordingly, petitioner's reliance on the said cases justifies the non-imposition of surcharge and interest.

Ginebra San Miguel, Inc. vs. Commissioner of Internal Revenue
CTA EB No. 2308 promulgated 10 November 2021

The imposition of excise taxes on the finished liquor products produced from tax-paid ethyl alcohol is contrary to the mandate of Section 170 of the NIRC. And yet, the same must be disallowed for a Petitioner that did not convince the court of the factual aspect of its claim for refund.

Facts:

Company G's finished liquor products are subjected by the Bureau of Internal Revenue (BIR) to excise tax under Section 141 of the National Internal Revenue Code ("NIRC") for the period of 1 June 2013 to 31 July 2013.

Company G filed on 8 October 2013 with the BIR a Claim for Refund for the subject excise tax in the total amount of PhP26,243,274. Claiming inaction, Company filed on 28 May 2015 a Petition for Review. The CTA Second Division denied Company G's claim due to insufficiency of evidence. Not satisfied from the decision of the 2nd Division, Company G filed the present Petition for Review on 28 August 2020.

Issue:

Is Company G entitled to claim for refund?

Ruling:

No. Indeed, the imposition of excise taxes on the finished liquor products produced from tax-paid ethyl alcohol is contrary to the mandate of Section 170 of the NIRC of 1997, as amended. Furthermore, Company G's instant refund claim was timely filed pursuant to the periods provided for under Sections 204 and 229 of the Code. And yet, the same must be disallowed for Company G did not convince the court of the factual aspect of its claim for refund.

In order to grant Company G's claim, the court needs to ascertain that the proof liters attributable to the claimed amount of Php9,927,074.34 were part of the actual amount of the raw materials that went into production and converted into finished goods which were erroneously subjected to excise tax on 1 June 2013 to 31 July 2013. Company G failed to do so.

Company G failed to present supporting documents that categorically show the formulation of its finished product to clearly establish how much raw alcohol material is used for each class or type of product, per size or container.

Section 112 of the NIRC merely requires a claimant to establish that: (i) it is engaged in zero-rated sales of goods or services; and, (ii) it paid input VAT that are attributable to zero-rated sales. In other words, the claimant must prove that it made a purchase of taxable goods or services for which it paid input VAT, and subsequently, engaged in the sale of goods or services subject to VAT, albeit at zero rate.

Commissioner of Internal Revenue vs. Lepanto Consolidated Mining Company
CTA EB No. 2389 promulgated 09 November 2021

Facts:

Company L filed its Quarterly VAT Returns for the year 2014. Then, on 16 March 2016, Company L filed an Application for Tax Credits/Refunds, together with the Checklist of Mandatory Requirement for Claims for VAT Credit/Refund, for its alleged input VAT in the total amount Php25,501,862.20.

Due to the alleged inaction of the CIR, Company L filed its Petition for Review before the Court in Division on 12 August 2016, praying that the Court grant its claim for tax credit of input VAT and that the CIR be directed to issue a Tax Credit Certificate (TCC).

After trial, the Court in Division rendered the assailed Decision on 30 June 2020, directing the CIR to issue a TCC in a reduce amount of PhP22,458,084.40.

On 22 December 2020, the CIR filed the present Petition for Review praying that the assailed Decision and Resolution of the Court in Division be reversed and set aside.

CIR claims that only the creditable input taxes are refundable and to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or the purchases must be directly used in the chain of the production.

Issue:

Is Company L entitled to the issuance of TCC in a reduced amount of Php22,458,084.40?

Ruling:

Yes. There is nothing in Section 110 (A) of the NIRC of 1997, as amended, which states that only those input taxes from purchases of goods that form part of the finished product of the taxpayer or must be directly used in the chain of the production shall be considered as creditable.

Section 110 (A) of the NIRC, is plain and categorical that any input tax evidenced by a VAT invoice or official receipts on the following transactions shall be creditable, viz.:

(a) purchase or importation of goods intended for:

- (i) sale;
- (ii) conversion into or intended to form part of a finished product for sale including packaging materials;
- (iii) use as supplies in the course of business;
- (iv) use as materials supplied in the sale of service;
- (v) use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC.

(b) purchase of services on which VAT has actually been paid.

Contrary to CIR's stance, there is no legal basis to limit the source of creditable input tax on purchases or importation of goods that actually form part of the finished products or directly used in the chain of the production only. It is doctrinal that when the words of a statute are clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers.

As correctly found by the Court in Division, Company L has duly substantiated its creditable input tax in the amount Php25,941,911.34 for the year 2014. After applying its output VAT liability in the amount of Php2,832,332.93 against its valid creditable input tax in the amount of PhP25,941,911.34, Company L still has excess input VAT amounting to Php23,109,578.41. Of Company L's excess input VAT amounting to Php23,109,578.41, the Court in Division has determined that the amount of Php22,458,084.40 is attributable to LCMC's valid zero-rated sales in the amount of Php1,414,068,311.34.

Section 112 of the NIRC merely requires a claimant to establish that: (i) it is engaged in zero-rated sales of goods or services; and (ii) it paid input VAT that are attributable to zero-rated sales. In other words, the claimant must prove that it made a purchase of taxable goods or services for which it paid input VAT, and subsequently, engaged in the sale of goods or services subject to VAT, albeit at zero rate.

Seizure/ Forfeiture

Unioil Petroleum Philippines, Inc. vs. Commissioner of Customs (COC) and Republic of the Philippines
CTA Case No. 9583 promulgated 1 December 2021

A judgment becomes "final and executory" by operation of law and one that lapses into finality becomes immutable and unalterable.

Without clear and convincing evidence of an alleged misdeclaration, it cannot be said that there is a misdeclaration pursuant to Section 2503 of the TCCP, as amended, and thus, forfeiture in favor of the government is not warranted under the said provision.

Facts:

Pursuant to purchase agreement entered by Company U with a customer, the former imported shipment supported by Bill of Lading and Import Declaration wherein the article is described as “aromatic hydrocarbon”.

On 27 June 2008, the Bureau of Internal Revenue (BIR) issued ATRIG in favor of Company U, allowing the release of its shipment of aromatic hydrocarbon from the Port of Bataan, as it is exempt from the payment of excise tax for not being among the articles enumerated under Title VI of the National Internal Revenue Code (NIRC) of 1997, as amended, and per BIR Ruling No. DA-07515 dated 10 March 2005.

The Commissioner of Customs (COC), on the other hand, claimed that Company U actually imported petroleum oil instead of aromatic hydrocarbon and relied on the UP-NSRI Laboratory Report and the US Customs Laboratory Report to support its claim. On 5 February 2009, the District Collector issued a Warrant of Seizure and Detention against Company U's shipment of imported products and CIIS officials went to the Oil ink terminal and padlocked the storage tanks.

Sometime in July 2011, the District Collector/OIC of the Port of Limay issued the Decision directing the lifting of the Warrant of Seizure and Detention against the subject shipment.

On 28 March 2017, the COC reversed the Decision of the OIC/District Collector, Port of Limay and ordered the forfeiture of the subject shipment in favor of the government, to be disposed of in accordance with law.

On 27 April 2017, Company U filed a Petition for Review before the Court, assailing COC's Decision dated 28 March 2017.

Issues:

1. Has the Decision of the District Collector/OIC of the Port of Limay, directing the lifting of the Warrant of Seizure and Detention against the subject shipment, attained finality?

2. Did the COC err in reversing the decision of the District Collector and in ordering the forfeiture of Company U's shipment in favor of the government on the ground of violation of Section 2503 and 2530 (f), (l) 3, 4 & 5 of the Tariff and Customs Code, as amended in relation to R.A. 8424?

Ruling:

1. Yes.

   The COC's Decision for forfeiture of the subject shipment was only issued on 28 March 2017, or after more than six years. The Decision of the OIC/District Collector, Port of Limay directing the lifting of the Warrant of Seizure and Detention against the subject shipment, has already become final and executory. In case of any seizure proceedings, when the concerned Collector of Customs renders a decision adverse to the government, such decision shall be automatically reviewed by the COC, and the records of the case elevated to the latter within five days from the promulgation of the same decision of the Collector of Customs and the COC is mandated to render a decision of the automatic appeal within 30 days from receipt of the records of the case. In case of failure of the COC to render said decision, the decision under review, i.e., the decision of the concerned Collector of Customs, shall become final and executory.

2. Yes.

   The forfeiture of the subject shipment may not be justified since there is no showing that the subject shipment is a prohibited importation or is contrary to law, in accordance with Section 2530(f) of the TCCP, as amended. Neither is there any showing that the subject importation was effected on the strength of false declaration or affidavit, or false invoice or other documents executed by the owner, importer, exporter or consignee, or through any other practice or device contrary to law by means of which, the subject article or articles was entered through a customhouse, to the prejudice of the government, as stated under 2530(l) (3-5) of the TCCP, as amended. Notably, the COC failed to show that Company U had the intention to evade the payment of the duties due, as a requisite under the said provision.

Supreme Court Cases

Metroplex Berhad and Paxell Investment Limited vs. Sinophil Corporation, et al.
Supreme Court (Third Division) G.R. No. 208281, 28 June 2021

The SEC only has the ministerial duty to approve the decrease of a corporation's authorized capital stock. After a corporation faithfully complies with the requirements laid down in Section 38, the SEC has nothing more to do other than approve the same.

Facts:

Sinophil Corporation ("Sinophil") entered into a Share Swap Agreement (Swap Agreement) with Metroplex Berhad ("Metroplex") and Paxell Investment Limited ("Paxell"). Under the Swap Agreement, Metroplex and Paxell would transfer 40% of their shareholdings in Legend International Resorts Limited (Legend) for a combined 35.5% stake in Sinophil. Pursuant to the Swap Agreement, Sinophil issued 2.41 billion shares to Metroplex and 1.45 billion shares to Paxell, totaling 3.87 billion shares in exchange for 46.38 million shares of Legend which were transferred by the Metroplex Group (Metroplex and Paxell) to Sinophil's name.

Sinophil and Belle executed a Memorandum of Agreement (Unwinding Agreement) with Metroplex and Paxell rescinding the Swap Agreement. After the execution of the Unwinding Agreement, Metroplex and Paxell were unable to return 1.87 billion of the Sinophil shares while another two billion Sinophil shares remained pledged by Metroplex in favor of International Exchange Bank and Asian Bank.

Subsequently, the shareholders of Sinophil, in two instances, approved the reduction of Sinophil's authorized capital stock. The two amendments of the Articles of Incorporation to decrease Sinophil's authorized capital stock were approved by the Securities and Exchange Commission (SEC).

Petitioners Metroplex and Paxell opposed the decrease in Sinophil's authorized capital stock.

Issue:

Did the SEC validly approve the decrease in Sinophil's authorized capital stock?

Ruling:

Yes, the decrease in respondent Sinophil's capital stock was legal and SEC's approval was proper.

Section 38 of the Corporation Code lists down the following requirements for a corporation to decrease its capital stock:

1. Approval by a majority vote of the board of directors;
2. Written notice of the proposed diminution of the capital stock, and of the time and place of a stockholders' meeting duly called for the purpose, addressed to each stockholder at his place of residence;
3. 2/3 of the outstanding capital stock voting favorably at the said stockholders' meeting;
4. Certificate in duplicate, signed by majority of the directors and countersigned by the chairman and secretary of the stockholders' meeting stating that legal requirements have been complied with;
5. Prior approval of the SEC; and
6. Effects do not prejudice the rights of corporate creditors.

Sinophil had fully complied with the requirements laid down under Section 38, as the necessary stockholders vote was obtained to approve the decrease in the authorized capital stock. Moreover, Sinophil has also submitted the complete documents in support of its application for the decrease of its authorized capital stock.

The SEC only has the ministerial duty to approve the decrease of a corporation's authorized capital stock. After a corporation complies with the requirements laid down in Section 38, the SEC has nothing more to do other than approve the same. The scope of the SEC's determination of the legality of the decrease in authorized capital stock is confined only to the determination of whether the corporation submitted the requisite authentic documents to support the diminution. For third parties like the SEC to interfere in the decrease in the authorized capital stock without reasonable ground is a violation of the "business judgment rule," which means that "the SEC and the courts are barred from intruding into business judgments of corporations, when the same are made in good faith."

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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.