Tax Bulletin

August 2023

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

#SGVforABetterPhilippines

SGV
Building a better working world

Table of contents

Anti-Money Laundering Council (AMLC) Resolution Nos. TF-67, TF-68 and TF-69	
Circular Letter No. CL-2023-039 and Circular Letter No. CL-2023-041 disseminate the AMLC Resolution No. TF-67 (dated 30 June 2023) and the AMLC Resolution Nos. TF-68 and TF-69 (both dated 31 July 2023), respectively, on the issuance of Sanctions Freeze Order (SFO) to take effect immediately against certain designated individuals, pursuant to their designation as terrorists under the Anti-Terrorism Council (ATC) Resolution No. 41 (dated 7 June 2023), and ATC Resolution Nos. 42 and 43 (both dated 26 July 2023), respectively, and directed the freezing without delay of the following property or funds, including related accounts owned or controlled by the designated group or individuals: a) Property or funds that are owned or controlled by the subject of designation, and is not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat; b) Property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the subject of designation; c) Property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subject of designation; and d) Property or funds of persons and entities acting on behalf or at the direction of the subject of designation	**18, 19**
Prohibition of the United Consumers Rural Bank, Inc. From Doing Business in the Philippines	
Circular Letter No. CL-2023-040 gives notice that the Monetary Board, in its Resolution No. 930.B dated 20 July 2023, decided to prohibit the United Consumers Rural Bank, Inc. from doing business in the Philippines pursuant to Section 30 of RA No. 7653, as amended.	**19**
Publication/Posting of Balance Sheet	
Circular Letter No. CL-2023-042 calls for the publication by all Trust Corporations of its Balance Sheet (Head Office, branches/other offices), as of 30 June 2023, in accordance with Section 183-T of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) and Memorandum No. M-2017-027 dated 11 September 2017.	**20**
Publication/Posting of Statement of Condition and/or Consolidated Statement of Condition	
Circular Letter No. CL-2023-043 calls for the publication by all Non-Bank Financial Institutions with Quasi-Banking Functions and/or Trust Authority of its Statement of Condition (Head Office, branches and other offices) side-by-side with its Consolidated Statement of Condition (parent institution and its subsidiaries and affiliates), if applicable, as of 30 June 2023, in accordance with Section 172-Q of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) for quasi-banks and Section 144-N of MORNBFI for trust entities.	**20**
Publication/Posting of Balance Sheet and Consolidated Balance Sheet	
Circular Letter No. CL-2023-044 calls for the publication/posting by all banks of its Balance Sheet (Head Office, branches, and other offices) together with its Consolidated Balance Sheet (banks and its subsidiaries and affiliates), if applicable as of 30 June 2023, in accordance with Section 175 of the Manual of Regulations for Banks and Memorandum No. M-2020-073 dated 25 September 2020.	**20**

Assessment	
The mineral products of a concerned contractor under an FTAA with the government is subject to excise tax under Section 151 of the Tax Code, as amended. By way of exception, Section 81 of Republic Act No. 7942 provides that the government's share, including said excise tax, may not be collected by the latter from an FTAA contractor, if it has not fully recovered its pre-operating expenses, exploration and development expenditures.	**30**
Assessment	
Based on certain foregoing provisions, an electric cooperative registered with the NEA has the option to register with the Cooperative Development Authority (CDA), and in case it opts not to do so, such electric cooperative shall not be entitled to the benefits and privileges under RA No. 9520. In contrast, should an electric cooperative opt to register with the CDA, it shall no longer be covered by PD No. 269, as amended. Based on PD No. 269, electric cooperatives have been granted income tax exemption, provided they operate in conformity with the purposes and provisions of PD No. 269.	**32**
Refund/ Issuance of Tax Credit	
Fiscal and non-fiscal incentives granted to FTAA contractors are intended to help support the latter's cash flow during the recovery period, the most critical phase, and that it is only after such period when normal taxes and fees must be paid to the government. Any tax, including DST, shall accrue from the execution of the FTAA, but shall be paid only after the recovery period.	**34**

BIR Administrative Requirements

RR No. 8-2023 clarifies the information that shall appear in the official receipts/sales invoices on purchases of Senior Citizens (SCs) and Persons with Disabilities (PWDs) through online (E-Commerce) or mobile applications, in relation to Revenue Regulations (RR) No.10-2015.

RR No. 8-2023 dated 26 July 2023

- The signature of the SC/PWD, as contemplated in RR No. 10-2015, shall not be required for qualified purchases made by SCs/PWDs online or through mobile applications.
- Nonetheless, the SC/PWD Identification Card number should still be provided by the SC/PWD when purchasing through online or mobile platforms; and the rules on entitlement to the benefits of the SC/PWD and to the tax deduction, pursuant to RR No. 7-2010, as amended; RR No. 5-2017, as amended; JMC No. 01 s.2022; and to future issuances pertaining to SC/PWD purchases through online or mobile applications, shall be strictly followed.

RR No. 9-2023 is issued to implement Section 150 (b) of the Tax Code, as amended, imposing Excise Tax on Perfumes and Toilet Waters.

RR No. 9-2023 dated 3 August 2023

- Section 2 of this RR provides for the definition of terms and phrases for purposes of determining the coverage of the imposition of excise tax on perfumes and toilet waters.
- Section 3 of the same RR provides for the Tax Rate and Tax Base to be used, as follows:

  a) For locally manufactured perfumes and toilet waters, the excise tax of 20% shall be based on the wholesale price, net of excise and value-added tax.

b) For imported articles, the excise tax of 20% shall be based on the value of importation used by the Bureau of Customs (BOC) in determining tariff and customs duties, net of excise and value-added tax.

- Section 4 of this RR provides for the following persons liable to excise tax:

  a) For locally manufactured perfumes and toilet waters, it shall be paid by the manufacturer or producer of such articles subject to excise tax. Should the said products be removed from the place of production without payment of the excise tax, the wholesaler/distributor, retailer, owner or any person having possession thereof shall be liable for the excise tax due thereon.

  b) For imported articles, it shall be paid by the owner or importer to BOC, in conformity with the regulations of the Department of Finance (DOF), and before the release of such articles from customs custody, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. In cases where tax-free articles are brought or imported into the Philippines by persons, entities, or agencies exempt from tax and are subsequently sold, transferred, or exchanged in the country to non-exempt persons, entities, or agencies, the purchaser or recipient of such goods shall be considered as the importer, and shall be liable for the excise tax due on such importation.

- As to the Time, Place and Manner of filing and payment of excise tax, Section 5 of this RR provides for the following:

  a) For locally manufactured perfumes and toilet waters:

     - Filing of Tax Returns – eBIRForms or Form 2200-AN (Automobiles and Non-Essential Goods) via eFPS, indicating the type of tax as XG;

     - Payment of Tax Excise Tax - Shall be paid by the manufacturer or producer before removal from the place of manufacture/production and warehouse. In the event that the brand owner(s) uses or engages in a toll manufacturing or subcontracting service or agreement, to facilitate the production of the excisable products, payment of excise tax shall be paid by the brand owner itself who owns the product or formulation before removals from their toll manufacturer's or subcontractor's production premises. In cases where labor or services are provided only by the toll manufacturer or subcontractor, payment of excise tax shall be filed and paid by the brand owner before the transfer of articles for bottling.

     - Place for Filing and Payment - Bank duly accredited by the Commissioner under the jurisdiction of the Revenue District Office (RDO) where the person liable for the payment of the tax is registered or required to be registered. If none, to the duly authorized collection agent under the jurisdiction of the RDO or duly authorized treasurer of the city or municipality where the manufacturing or production plant is located or where the person in possession of untaxed perfumes and toilet waters is registered or required to be registered. For Large taxpayers, it shall be filed and paid through eFPS.

  b) For imported articles – it shall be paid by the importer to the BOC or its duly authorized representative prior to the release of such goods from customs custody. In case a person is found in possession of untaxed locally manufactured or imported perfumes and toilet waters, the tax due thereon shall be paid immediately upon demand. This includes or covers any person, natural or juridical directly engaged in the reselling, retailing, marketing, on-line selling and distribution of perfumes and toilet waters.

- This RR likewise provides for the registration requirements of those who intend to engage in business as manufacturer, producer, or brand owner availing the services of a toll manufacturer, subcontractor or importer-dealer of perfumes and toilet waters, and additional compliance requirements for those who are covered by this regulation.

- Within 15 days from the effectivity of these RR, all manufacturers and importers of perfumes and toilet waters shall prepare and submit to the Chief of Excise LT Field Operations Division, a duly notarized list of inventory of their primary raw materials, perfumes and toilet waters held in their possession as of the effectivity of this RR.

RMO No. 28-2023 amends certain provisions of Revenue Memorandum Order (RMO) No. 23-2023 to align existing policies in the issuance of Tax Verification Notices (TVNs) in the processing of claims for VAT credit/refund except those under the authority and jurisdiction of the Legal Group.

RMO No. 28-2023 dated 10 August 2023

Certain items under RMO No. 23-2023 are hereby amended as follows:

- *Item 8 under "General Policies"* - TVN shall be issued by the herein indicated Revenue Officials to authorize the verification of VAT credit/refund claims filed under Sections 112, 204 (C) and 229 of the Tax Code, as amended:

Processing Office	Revenue Official
Revenue District Office (RDO)	Revenue District Officer
VAT Audit Section (VATAS)	Assistant Regional Director
VAT Credit Audit Division (VCAD)	Division Chief
Large Taxpayer VAT Unit (LTVATAU)	Assistant Commissioner, LTS

- *Item 1 (c) under "Procedures"* – The Revenue Officials identified under item 1.8 of this Order shall issue a TVN to authorize the verification of VAT credit/refund.

- *Item 1 of Annex C.3* – The Revenue Officials identified under 1.8 of this Order shall issue a TVN to authorize the verification of VAT credit/refund.

RMC No. 78-2023 prescribes the administrative requirements for importers and manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of heated tobacco products (HTPs) and vapor products.

RMC No. 78-2023 dated 20 July 2023

- Importers or manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of HTPs and vapor products are required to comply with the following requirements:

Policies and Guidelines	
Application for a Permit to Operate as importer or manufacturer of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of HTPs and vapor products	To be filed in writing addressed to the Commissioner of Internal Revenue, Attention: Chief, Excise LT Regulatory Division (ELTRD), together with the following basic supporting documents: ▸ BIR Certificate of Registration (BIR Form No. 2303), including Payment Form (BIR Form No. 0605) evidencing payment of registration fee; ▸ Copy of latest Income Tax Return duly filed with and received by the BIR, if applicable; ▸ Location map, and plat and plan of the Production Plant/ Warehouse, if applicable; and ▸ Specifications (model/serial number) of the apparatus or mechanical contrivance, and equipment, if locally manufactured.

Policies and Guidelines	
Application with the ELTRD for Electronic Authority to Release Imported Goods (eATRIG) for every importation	For every importation shall be done using the Philippine National Single Window System (https://nsw.gov.ph/). The basic documentary requirements include the following: ▸ Bill of lading ▸ Packing list ▸ Commercial invoice ▸ Import Entry and Internal Revenue Declaration

- Failure to comply with the foregoing requirements shall be subject to the corresponding penalties provided for under Section 254 and Section 265-B of the 1997 NIRC, as amended.

RMC No. 79-2023 issued on 8 August 2023, announces the availability of the following BIR Forms in the Electronic Filing and Payment System (eFPS).

RMC No. 79-2023 dated 3 August 2023

BIR Form No.	Description	Deadline of Filing/Payment
1600-PT	Monthly Remittance Return of Other Percentage Taxes Withheld	On or before the 10th day of the month following the month in which withholding was made.
1600-VT	Monthly Remittance Return of Value-Added Tax Withheld	On or before the 10th day of the month following the month in which withholding was made.
1602Q	Quarterly Remittance Return of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/ Trusts/Etc.	Not later than the last day of the month following the close of the quarter during which withholding was made.
1603Q	Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File	Not later than the last day of the month following the close of the quarter during which withholding was made.
2551Q	Quarterly Percentage Tax Return	Within 25 days after the end of each taxable quarter
2552	Percentage Tax Return for Transactions Involving Shares of Stock Listed and Traded the Local Stock Exchange or Through Initial and/or Secondary Public Offering	1. For tax on sale of shares of stock listed and traded through the Local Stock Exchange (LSE) – within five banking days from date of collection. 2. For shares of stocks sold or exchanged through primary public offering – within 30 days from date of listing of shares of stock in LSE; and 3. For tax on shares of stock sold or exchanged through secondary public offering – within five banking days from date of collection.

- All taxpayers mandated to use the eFPS shall file the above-mentioned returns and pay the corresponding taxes due, if any, using the eFPS facility, effective immediately.

RMC No. 80-2023 clarifies the issues relative to the implementation of RR No. 3-2023 and other related concerns on Value-Added Tax (VAT) zero-rate transactions on local purchases of the Registered Export Enterprises (REEs) and other entities granted VAT zero-rate incentives under special laws and international agreements.

RMC 80-2023 dated 9 August 2023

- RR No. 3-2023 was published in a newspaper of general circulation on 28 April 2023; thus, it took effect on the said date. Upon the effectivity of RR No. 3-2023, the local supplier of goods and/or services of REEs shall no longer be required to secure prior approval for VAT zero-rate with the BIR.

- To qualify for VAT zero-rating, the local purchase of the REE must be directly and exclusively used in the registered project or activity, and not included in the negative list provided in RR No. 3-2023. Should the goods and/or services fall within the negative list, the REE is not precluded from further proving, with supporting evidence, to the concerned Investment Promotion Agency (IPA) that such goods and/or services are indeed directly and exclusively used in the registered project or activity. Upon determination that such goods and/or services are directly and exclusively used in the registered project or activity of the REE, a VAT Zero-Rate Certificate shall be issued by the concerned IPAs. This is without prejudice to the BIR's power to conduct post audit.

- While it is true that the VAT zero-rating on local purchases of goods and/or services shall be availed of on the basis of VAT Zero-Rate Certification issued by the concerned IPA pursuant to RR No. 3-2023, the REE-buyer must still provide a certified copy of the following documents to its local supplier for the latter's documentation in case of post-audit by the BIR, to wit:

  a. VAT Zero-Rate Certification issued by the concerned IPA;

  b. Certificate of Registration (COR) issued by the BIR having jurisdiction over the head office/branch/freeport/ ecozone location where the goods and/or services are to be delivered;

  c. COR issued by the concerned IPA stating all registered ecozone location; and

  d. A sworn affidavit executed by the REE-buyer, stating that the goods and/or services are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation be directly and exclusively used for the production of goods and/or completion of services to be exported, following the prescribed format under Revenue Memorandum Circular (RMC) No. 84-2022.

- Applications for VAT zero-rate accompanied by VAT Zero-Rate Certificate issued by the concerned IPA, as prescribed in RMC No. 36-2022, which have been received prior to the effectivity of RR No. 3-2023 but have not yet been acted upon by the concerned office of the BIR, shall be accorded VAT zero-rating treatment from the date of filing of such application subject to the conduct of post audit by the BIR that the services are indeed directly and exclusively used by the REE in its registered project or activity.

- If the transaction was entitled for purposes of VAT zero-rating, i.e., the goods and/or services sold were directly and exclusively used in the registered project or activity, and the REE is duly endorsed by the concerned IPA, but the seller failed to secure an approved Application for VAT Zero-Rate, such sale shall be subject to 12% VAT.

- Application for VAT zero-rate for a particular sale transaction that was previously disapproved will not be considered VAT zero-rate upon the effectivity of RR No. 3-2023 since there was already a prior determination by the BIR that the transaction is not qualified for VAT zero-rate. Accordingly, the same is subject to 12% VAT notwithstanding the issuance of RR No. 3-2023.

- BIR-disapproved applications for VAT zero-rate determined to be not qualified for VAT zero-rating purposes, are subject to VAT. Inasmuch as these transactions are subject to VAT, the VAT-registered REE enjoying 5% Gross Income Tax (GIT) or Special Corporate Income Tax (SCIT) may claim the corresponding input VAT from the said purchase, which can be utilized as deduction against future output VAT liability after the incentive period or may be claimed as VAT refund under Section 112(B) of the National Internal Revenue Code of 1997, as amended, in relation to Q & A No. 40 of RMC No. 24-2022.

- The following elements must be considered in the evaluation of transactions subject to VAT zero-rating during audit of transactions with REE:

    a. The REE's place of business where the registered project or activity is being processed/rendered must be duly registered with the appropriate BIR office;

    b. The REE must be duly registered with the IPA administering tax incentives;

    c. A VAT Zero-Rate Certificate has been issued by the IPA to the REE;

    d. The transaction occurred within the period the REE is entitled to VAT zero-rate incentives and is corroborated with a valid documentation, such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoice and/or official receipt, delivery receipt, or similar documents to prove existence and legitimacy of the transaction;

    e. The purchased goods and/or services must be delivered within the REE's registered head office/branch/freeport/ecozone/location granted with VAT zero-rate incentives; and

    f. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances.

- Since the application for VAT zero-rate is no longer required upon effectivity of RR No. 3-2023, the supplier should identify the goods and/or services being sold that are directly and exclusively attributable to the registered project or activity of the REE by enumerating them in Section III, Annex "A" of the prescribed template for VAT Zero-Rate Certification per RMC No. 36-2022. The goods and/or services must likewise be declared in the REE's sworn undertaking.

- The VAT zero-rating shall not extend to Health Maintenance Organization (HMO) plans procured for employees' dependents, as well as HMO plans for employees not directly involved in the operations of the registered projects or activities of the REEs. Accordingly, only those HMO plans acquired for employees directly involved in the operation of REE's registered project or activities and forming part of their compensation package shall be accorded with VAT zero-rating.

- For audit investigation/verification purposes, the supplier of HMO plans must still require the REE-buyer to provide a detailed information on the acquired HMO plans as prescribed in Annex "A" of RMC No. 137-2022 and maintain a database of the same, for ease of reference.

- The submission of application for VAT zero-rate of the local suppliers of other entities granted with VAT zero-rate incentives under special laws and international agreements shall not be required. Alternatively, such local suppliers of goods and/or services shall require from the entities the documentary requirements enumerated below:

  A. For the Supplier of Renewable Energy (RE) Developer

     The local suppliers of goods, properties, and services shall require from the duly registered RE Developer a certified copy of the following documents:

     - COR issued by the BIR which has jurisdiction over the location of the RE Project;
     - COR issued by the Board of Investments (BOI); and
     - COR issued by the Department of Energy (DOE).

     It is emphasized that the VAT zero-rating shall apply only on the sale of goods, properties, and services, for the development, construction and installation of the RE Developer's power plant facilities. This includes the entire process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contactors.

  B. For the Supplier of Other Entities Under Special Law and International Agreements

     The buyer must provide its local supplier a certified copy of VAT Exemption Certificate/Ruling or equivalent document, issued by the appropriate office of the BIR and other documentary requirements as may be required under the special law and international agreement, including its implementing rules and regulations.

- The following elements must be considered in the evaluation of transactions subject to VAT zero-rate:

  a. The location of the registered project of the entity granted with VAT zero-rate incentives under special law must be duly registered with the appropriate BIR office;

  b. The entity granted with VAT zero-rate incentives under special law must be duly registered with other government agency (OGA) administering tax incentives;

  c. The entity granted with VAT zero-rate incentives under special law or international agreement must have been issued by its concerned OGA administering Tax Incentives a VAT Exemption Certificate/BIR Ruling/ equivalent certificate; and

  d. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances, special laws or international agreements; and is likewise corroborated with a valid documentation, such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoice and/or official receipt, delivery receipt, or similar documents to prove existence and legitimacy of the transaction;

- The template for VAT Zero-Rate Certificate to be issued by the concerned IPA to its compliant REEs is prescribed under RMC No. 36-2022 and attached as Annexes "B-1" and "B-2" of the Circular, for registered under Corporate Recovery and Tax Incentives for Enterprises (CREATE) and Pre-CREATE, respectively.

- The template for VAT Zero-Rate endorsement of IPAs, which contains basic information needed in the audit investigation/verification by the concerned investigating office of the BIR, is attached as Annex "C" of the Circular and shall be submitted to the BIR through the Assessment Service, Attention: Audit Information, Tax Exemption and Incentives Division (AITEID), in softcopy (excel file format), via email address: aiteid_ies@bir.gov.ph, within 20 days following the close of each taxable quarter.

RMC No. 83-2023 circularizes Republic Act (RA) No. 11956 (An Act Further Amending RA No. 11213, Otherwise Known as the "Tax Amnesty Act", as Amended by RA No. 11569, by Extending the Period of Availment of the Estate Tax Amnesty until 14 June 2025, and for Other Purposes).

RMC No. 83-2023 dated 14 August 2023

RMC No. 84-2023 announces the availability of the revised BIR Form No. 2200-M (January 2018 ENCS) v2.

RMC No. 84-2023 dated 15 August 2023

- This Circular is being issued to prescribe the newly-revised BIR Form No. 2200-M [Excise Tax Return for Mineral Products] January 2018 (ENCS) v2 attached as Annex "A". It was revised due to some changes in the column headers of Schedule 1 - Summary of Removals and Excise Tax Due on Mineral Products Chargeable Against Payment.

- The revised BIR Form No. 2200-M is already available for download in the BIR website (www.bir.gov.ph) under the BIR Forms-Excise Tax Return Section. However, the Form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms). Thus, eFPS/eBIRForms filers shall continue to use the BIR Form No. 2200-M [October 2002 (ENCS)] in the eFPS and in Offline eBIRForms Package v7.9.4 in filing and paying the Excise Tax due. A separate revenue issuance shall be issued to announce its availability in the eFPS and in the Offline eBIRForms Package.

- Manual filers shall download the PDF version of the revised BIR Form No. 2200-M and fill-out all the applicable fields; otherwise penalties under Sec. 250 of the Tax Code, as amended, shall be imposed. Payment of the tax due thereon, if any, shall be made thru:

  a) Online Payment

    - Landbank of the Philippines (LBP) Link.BizPortal – for taxpayers who have LANDBANK/OFBank ATM account and taxpayer utilizing PCHC PayGate or PesoNet facility (depositors of RCBC, Robinsons Bank, Union Bank, BPI, PSBank, and Asia United Bank); or
    - Development Bank of the Philippines' (DBP Pay Tax Online) – for holders of Visa/MasterCard Credit Card and/or Bancnet ATM/Debit Card; or
    - Union Bank of the Philippines (UBP) Online/The Portal – for taxpayers who have an account with UBP or Instapay using UPAY Facility for individual non-account holder of Union Bank.
    - Tax Software Provider (TSP) – GCash, Maya, MyEG

b) Manual Payment

- In any Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Large Taxpayers Office/Division (LTD) / Revenue District Office (RDO) where the taxpayer (Head Office of the business establishment) is registered; or
- In places where there are no AABs, the return shall be filed and the tax due shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer (Head Office of the business establishment) is registered regardless of cash and check amount. However, for payment through RCOs in areas with AABs, cash payment should not exceed Twenty Thousand Pesos (PhP20,000.00).

BUREAU OF CUSTOMS

Submission of Origin Declaration of Exporters under the EU Generalised System of Preferences (EU-GSP+)

AOCG Memorandum No. 188-2023 directs the Export Offices in the Philippines to submit data on Origin Declarations issued by exporters to the European Commission Directorate-General for Taxation and Customs Union (DG TAXUD).

Assessment and Operations Coordinating Group (AOCG) Memorandum No. 188-2023 dated 3 July 2023

This measure aims to ensure compliance with the EU GSP Plus arrangement and monitor the application of rules of origin.

The data submission deadline is 31 July 2023, and it should cover exports to the European Union from 1 January 2021 to 30 June 2023.

Subsequent reports are to be submitted on the fifth day of every month in Excel format, using the provided template.

Revenue Memorandum Circular No. 68-2023 Further Clarifying the Imported Goods that will No Longer Require the Issuance of "AUTHORITY TO RELEASE IMPORTED GOODS" by the Bureau of Internal Revenue Prior to Release by Bureau of Customs

CMC No. 99-2023 states that the requirement for the Authority to Release Imported Goods (ATRIG) from the Bureau of Internal Revenue (BIR) is no longer required for the release of imported feeds, feed ingredients, and fertilizer in accordance with Republic Act No. 11032, also known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018."

Customs Memorandum Circular (CMC) No. 99-2023 dated 21 June 2023

Instead, certificates obtained from the Bureau of Animal Industry, Fertilizer and Pesticides Authority and all other regulatory government agencies competent to certify that such goods are feed, feed ingredients and fertilizers should be directly presented to the BOC for the release of these goods.

These certifying government agencies are responsible for validating the declared goods to be released from the BOC. They are also required to submit a list of importers who obtained such certification to the BIR for tax audit purposes.

CMC No. 101-2023 implements Department of Agriculture (DA) Administrative Circular (AC) No. 2, Series of 2023 regarding "Rules and Regulations Governing the importation of leather and hides (finished products, tanned and untanned, processed and unprocessed) and other non-food, non-feed, processed products of animal origin." According to the circular, the Bureau of Animal Industry (BAI) will no longer handle the processing of Sanitary and Phytosanitary Import Clearances (SPSICs) lodged in the Intercommerce.

Implementation of the Department of Agriculture (DA) Administrative Circular (AC) No. 2, Series of 2023 "Rules and Regulations Governing the Importation of Leather and Hides (Finished Products, Tanned and Untanned, Processed and Unprocessed) and Other Non-Food, Non-Feed Processed Products of Animal Origin"

Customs Memorandum Circular (CMC) No. 101-2023 dated 13 June 2023

Instead, the BAI requests the Bureau's Examiner/s to accept either the Veterinary Health Certificate (VHC), Proforma Invoice, or proof of purchase, whichever is available, as a substitute for SPSICs when importing fully finished leather goods/fully tanned hides and skin.

CMC No. 104-2023 states that Sections 244 and 245 of the National Internal Revenue Code (NIRC), as amended, and Revenue Regulations (RR) No. 2-2023, prescribes the use of constructive affixture of documentary stamps as proof of payment of Documentary Stamp Tax (DST) on certificates issued by government agencies or instrumentalities.

Revenue Regulations No. 2-2023 (RR 2-2023) dated 29 March 2023 "Prescribing the Use of Constructive Affixture of Documentary Stamp Tax for Certificates Issued by Government Agencies or Instrumentalities"

Customs Memorandum Circular (CMC) No. 104-2023 dated 9 June 2023

Instead of using loose documentary stamps, all government agencies or instrumentalities shall use the constructive affixture of documentary stamp on the certificates they issue that are subject to Documentary Stamp Tax (DST) subject to the following:

- For every issuance of certificate, the agency shall collect from their applicants the corresponding amount of DST due thereon which shall be indicated as one of the items in the government official receipt. The said receipt shall be attached to the taxable certificate as proof of payment of the tax.
- The collected DST shall be remitted monthly by filing the Documentary Stamp Tax Declaration Return (BIR Form No. 2000) and paying the tax through the available payment facilities of the BIR on or before the fifth day of the following month.
- The use of one government official receipt to cover two or more certificates shall be allowed subject to the following conditions:
    - A serial or control number shall be printed and consecutively assigned for every issuance of certificate and the same shall be conspicuously located on the face thereof.
    - The serial or control numbers of the certificates and the total amount, of DST due, among others, shall be clearly indicated in the government official receipt.

PEZA and BOI

Board of Investments (BOI) Memorandum Circular No. 2023-004 prescribes the guidelines on the availment of duty exemption/ VAT and customs duty exemption on importation of capital equipment, raw materials, spare parts or accessories under the CREATE Act.

BOI MEMORANDUM CIRCULAR NO. 2023-004 dated 30 June 2023

Registered Business Enterprise (RBEs) duly classified as Export Enterprise can avail VAT and customs duty exemption for a period of 17 years from the date of registration while Domestic Market Enterprise incentives will be limited to customs duty exemption for a period of 12 years from the date of registration.

The exemption from custom duty shall only apply to importations by RBEs in good standing provided the following conditions are complied with:

a. Direct and Exclusive Use. The customs duty exemption shall only apply to the importation of capital equipment, raw materials, spare parts, or accessories directly and exclusively used in the registered project or activity by RBEs.

b. The capital equipment, raw materials, spare parts, or accessories:

   i. Are directly and reasonably needed by the RBE;
   ii. Will be used exclusively in and as part of the direct cost of the registered project or activity of the RBE; and
   iii. Are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices. In compliance with this condition, the RBE shall secure the CNLA from the BOI-Legal and Compliance Service prior to importation;

c. Prior approval. The approval of the BOI, through the CAI, must be obtained by the RBE prior to the importation of the goods. Provided, that the application for importation shall be accompanied by a quotation/pro forma invoice in the name of the applicant RBE as consignee to whom the shipment will be released.

Meanwhile, VAT exemption on importation shall only apply to goods directly and exclusively used in the registered project or activity of the RBE during the period of registration of the registered project or activity.

RBEs should secure BOI approval within the first five years from the date of importation, before the sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories which were granted customs duty exemption; Provided that the sale, transfer, or disposition within five years from the date of importation shall require the payment of duties based on the net book value. For sale, transfer or disposal of the imported items without prior BOI approval, the RBE and the vendee, transferee, or assignee shall be solidary liable to pay twice the amount of the duty exemption that should have been paid during its importation. Meanwhile, in case the imported items will be used for a non-registered project or activity by the RBE at any time within the first five years from date of importation, the RBE shall secure prior BOI approval and pay the amount corresponding to the exempt customs duty on importation thereof.

Furthermore, the circular enumerates the documentary requirements on the application for VAT and customs duty exemption on importation and the relevant steps to be observed on the import procedure with DOF and BOC.

Banks and Other Financial Institutions

Guidelines on the Use of Benchmarks for Unit Investment Trust Funds (UITFs)

Circular No. 1178 provides the guidelines on the use of benchmarks in presenting the returns of UITFs.

CIRCULAR NO. 1178 Series of 2023 issued on 9 August 2023

Benchmarks allow UITF participants to fairly assess whether a fund is overperforming or underperforming vis-à-vis a relevant market index or a portfolio with a comparable return-risk profile. As such, the trustee's presentation of fund performance shall be based on the principles of fair representation and full disclosure.

The trustee shall include in its policies and procedures the following:

a. Process for the selection and approval of a benchmark;
b. Process for the periodic review of the continuing appropriateness of the chosen benchmark and the criteria for changing the benchmark; and

c. Contingency plan in the event that the benchmark becomes unavailable or is fundamentally changed (i.e., there has been a change that would result in a significantly different benchmark value)

A valid benchmark for a UITF has the following characteristics:

a. Has a clearly defined objective;
b. Appropriately reflects the market or sector it aims to represent;
c. Is comprised of sufficiently diversified financial instruments that are liquid;
d. Is objectively and consistently calculated;
e. Is a total return benchmark; and
f. Reflects returns that are net of taxes.

In cases when the appropriate benchmark for a UITF does not satisfy Item(s) "e" and/or "f", the trustee shall disclose the same in the KIIDS.

During the selection and approval process, the trustee shall:

a. Ascertain that the chosen benchmark:

    1. Reflects the investment mandate, objective, or strategy of the UITF; and
    2. Possesses the characteristics of a valid benchmark.

    In cases when there are misalignments between the risk-return profile and/or characteristics of the UITF and those of the benchmark, the choice of the benchmark in view of the misalignments must be reasonably justified and duly approved by the trustee's board of directors; and

b. Ensure that the underlying securities of the benchmark are identifiable and priced in accordance with Bangko Sentral ng Pilipinas (BSP) guidelines or international financial reporting standards on the valuation of assets.

The trustee may use a benchmark managed or administered by its related party as defined under Sec. 131/131-Q: Provided, that the trustee is able to ascertain that there are effective arrangements in place to manage conflicts of interest. These include controls to ensure that neither party exerts influence over the activities of the other party.

Minimum Disclosure Requirements

Key Information and Investment Disclosure Statement (KIIDS)

This document shall contain the key features of the UITF, the fund performance against a benchmark, and the fund's prospective and outstanding investments. It shall use plain language presented in a concise manner and shall comply with the guidelines in Appendix 56/Q-33. This document shall be updated and made available to participants at least every calendar quarter and made publicly available not later than 45 calendar days from the reference period.

In presenting the fund performance against a benchmark, the following minimum information shall be disclosed in the KIIDS:

1. The description and key characteristics of the benchmark, and its use relative to the fund's objective or investment strategy (e.g., whether the fund aims to track the performance of the benchmark or to outperform the same);
2. For a customized benchmark (i.e., a benchmark created by the trustee via the combination of multiple benchmarks), the description of each component benchmark and its corresponding weight as well as the rebalancing frequency, if any;

3. If the benchmark is managed or administered by a related party of the trustee as defined under Sec. 131/131-Q, how the trustee and the benchmark manager/ administrator manage existing and potential conflicts of interest;
4. If there are misalignments between the risk-return profile and/or characteristics of the UITF and those of the benchmark, the reason/s for and the extent of the misalignments; and
5. If there has been a change in the benchmark, the date the benchmark was changed, as well as the description of and reason for the change in the benchmark. These details and the illustrative presentation of performance against the old and new benchmarks shall be disclosed in the KIIDS for a minimum of one year from the date of adoption of the new benchmark.

The Guide in Preparing the Key Information and Investment Disclosure Statement for UITFs are also amended to read, as follows:

1. The Key Information and Investment Disclosure Statement (KIIDS) provides unit investment trust fund (UITF) participants with key information and disclosures to facilitate better understanding and comparison of UITFs offered by trust entities (TEs). As such, the required information under the *Minimum Disclosure Requirements and the Guidelines on the Selection of Benchmarks for UITFs* in Sec. 414/414-Q and this Appendix shall be clearly stipulated in the KIIDS and not relegated to linked sources.
2. The KIIDS shall be concise and provide accurate information. The text shall be written in Arial style with font size 10 or its equivalent while the disclosures enumerated below shall be in capital letter and in bold font:

xxx

6. The KIIDS shall give a fair and balanced view of the investments and the UITF's returns. The trustee shall ensure that no material information is omitted.
7. The trustee shall include a link to a website or document(s) from which participants can obtain additional information on the benchmark (e.g., a description of the composition of securities and calculation methodology) and the benchmark administrator, as applicable.
8. The trustee shall likewise provide a link to additional explanatory materials on the features of the fund, if deemed appropriate.

Trust entities shall be given one year from the effectivity of this Circular to conduct a review of the benchmarks of all existing funds to determine their propriety and validity in accordance with these guidelines; and to make appropriate changes to their policies, processes, procedures and Key Information and Investment Disclosure Statements to comply with these Guidelines.

Anti-Money Laundering Council (AMLC) Resolution No. TF-67

CIRCULAR LETTER NO. CL-2023-039 Series of 2023 issued on 17 July 2023

BSFIs are reminded to submit to the AMLC: a) a written return, pursuant to, and containing the details required under, Rule 16.c of the Implementing Rules and Regulations of RA No. 10168, otherwise known as the Terrorism Financing Prevention and Suppression Act of 2012 (TFPSA); and b) Suspicious Transaction Report on all previous transactions of the designated persons within five days from the effectivity of the SFO.

Circular Letter No. CL-2023-039 disseminates the AMLC Resolution No. TF-67 dated 30 June 2023, on the issuance of Sanctions Freeze Order (SFO) to take effect immediately against certain designated individuals, pursuant to their designation as terrorists under the Anti-Terrorism Council (ATC) Resolution No. 41 (2023) dated 7 June 2023, and directed the freezing without delay of the following property or funds, including related accounts owned or controlled by the designated persons: a) property or funds that are owned or controlled by the subject of designation, and is not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat; b) property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the subject of designation; c) property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subject of designation; and d) property or funds of persons and entities acting on behalf or at the direction of the subject of designation.

Any person, whether natural or juridical, including covered persons, among others, who a) deals directly or indirectly, in any way and by any means, with any property or fund that he knows or has reasonable ground to believe is owned or controlled by the individuals designated under ATC Resolution No. 41 (2023), including funds derived or generated from property or funds owned or controlled, directly or indirectly, by such designated individuals; or b) makes available any property or funds, or financial services or other related services to the said designated individuals, shall be prosecuted to the fullest extent of the law pursuant to the TFPSA.

Prohibition of the United Consumers Rural Bank, Inc. From Doing Business in the Philippines

Circular Letter No. CL-2023-040 gives notice that the Monetary Board, in its Resolution No. 930.B dated 20 July 2023, decided to prohibit the United Consumers Rural Bank, Inc. from doing business in the Philippines pursuant to Section 30 of RA No. 7653, as amended.

CIRCULAR LETTER NO. CL-2023-040 Series of 2023 issued on 20 July 2023

The Philippine Deposit Insurance Corporation has been designated as Receiver with a directive to proceed with the takeover and liquidation of the aforementioned rural bank in accordance with Section 12 (a) of RA No. 3591, as amended.

Anti-Money Laundering Council (AMLC) Resolution Nos. TF-68 and TF-69

Circular Letter No. CL-2023-041 disseminates the AMLC Resolution Nos. TF-68 and TF-69, both dated 31 July 2023, on the issuance of Sanctions Freeze Order (SFO) to take effect immediately against certain designated groups and individuals, pursuant to their designation as terrorists by the Anti-Terrorism Council (ATC) by virtue of ATC Resolution Nos. 42 and 43, both dated 26 July 2023, respectively, and directed the freezing without delay of the following property or funds, including related accounts owned or controlled by the designated group or individuals:

a) Property or funds that are owned or controlled by the subject of designation, and is not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat;
b) Property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the subject of designation;
c) Property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subject of designation; and
d) Property or funds of persons and entities acting on behalf or at the direction of the subject of designation

CIRCULAR LETTER NO. CL-2023-041 Series of 2023 issued on 4 August 2023

BSFIs are reminded to submit to the AMLC: a) a written return, pursuant to, and containing the details required under Rule 16.c of the Implementing Rules and Regulations of RA No. 10168, otherwise known as the Terrorism Financing Prevention and Suppression Act of 2012 (TFPSA); and b) Suspicious Transaction Reports on all previous transactions of the designated persons within five days from the effectivity of the SFO.

Any person, whether natural or juridical, including covered persons, among others, who a) deals directly or indirectly, in any way and by any means, with any property or fund that he knows or has reasonable ground to believe is owned or controlled by the individuals designated under ATC Resolution Nos. 42 and 43, including funds derived or generated from property or funds owned or controlled, directly or indirectly, by such designated group or individuals; or b) makes available any property or funds, or financial services or other related services to the said designated group or individuals, shall be prosecuted to the fullest extent of the law pursuant to the TFPSA.

Publication/Posting of Balance Sheet

Circular Letter No. CL-2023-042 calls for the publication by all Trust Corporations of its Balance Sheet (Head Office, branches/other offices), as of 30 June 2023, in accordance with Section 183-T of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) and Memorandum No. M-2017-027 dated 11 September 2017.

CIRCULAR LETTER NO. CL-2023-042 Series of 2023 issued on 14 August 2023

Publication/Posting of Statement of Condition and/or Consolidated Statement of Condition

Circular Letter No. CL-2023-043 calls for the publication by all Non-Bank Financial Institutions with Quasi-Banking Functions and/or Trust Authority of its Statement of Condition (Head Office, branches and other offices) side-by-side with its Consolidated Statement of Condition (parent institution and its subsidiaries and affiliates), if applicable, as of 30 June 2023, in accordance with Section 172-Q of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) for quasi-banks and Section 144-N of MORNBFI for trust entities.

CIRCULAR LETTER NO. CL-2023-043 Series of 2023 issued on 14 August 2023

Such Statement of Condition and/or Consolidated Statement of Condition where applicable, shall be published in a newspaper of general circulation in the city/province, then in a newspaper published in Metro Manila or in the nearest city/province within 20 working days from the date of this Circular Letter.

Publication/Posting of Balance Sheet and Consolidated Balance Sheet

Circular Letter No. CL-2023-044 calls for the publication/posting by all banks of its Balance Sheet (Head Office, branches, and other offices) together with its Consolidated Balance Sheet (banks and its subsidiaries and affiliates), if applicable as of 30 June 2023, in accordance with Section 175 of the Manual of Regulations for Banks and Memorandum No. M-2020-073 dated 25 September 2020.

CIRCULAR LETTER NO. CL-2023-044 Series of 2023 issued on 14 August 2023

Approved Applications for New Banking Offices and Opened Banking Offices During the 1st Quarter of 2023

Circular Letter No. CL-2023-045 provides the list of 1) approved applications for new banking offices, and 2) opened banking offices during the 1st Quarter of 2023.

CIRCULAR LETTER NO. CL-2023-045 Series of 2023 issued on 17 August 2023

Guidelines on the Submission of Prudential Reports using Extensible Mark-Up Language Format Through the Application Programming Interface

Memorandum No. M-2023-045 provides for the guidelines to be observed relative to the submission of prudential reports using the Extensible Mark-up Language (XML) format through the Application Programming Interface (API) beginning reference period 30 June 2023 reports:

MEMORANDUM NO. M-2023-022 Series of 2023 issued on 20 July 2023

1. Universal/Commercial Banks (UKBs) and their subsidiary Thrift (TBs) and Rural/ Cooperative Banks (RCBs) as well as Digital Banks (DGBs) shall submit their XML report which they generated on their own through machine-to-machine modality using the bank's chosen process as coordinated with the BSP.
2. Stand-alone TBs and RCBs may use the Integral Financial Supervision System (IFSS) Submission Portal under the BSP Relationship Management System (BRMS) of the BSP as mentioned in Section 3 until further notice.
3. The IFSS Submission Portal can be accessed at **https://brms.bsp.gov.ph** using the latest version of web browsers such as Microsoft Edge, Internet Explorer, Firefox and Google Chrome.
4. Stand-alone TBs and RCBs that opted to submit the generated XML report through machine-to-machine modality using the bank's own process as coordinated with the BSP similar to Section 1 above or via the approach introduced by the BSP using Postman protocol shall submit an updated User Registration Form (URF), which can be requested from their respective Department of Supervisory Analytics Account Officer. The accomplished URF shall be submitted to **brms_urf@bsp.gov.ph** using the following prescribed subject format and file naming convention:

   Subject: URF<space><Bank Name>
   Filename: URF_<Bank Name>.pdf

   For example,

   To: brms_urf@bsp.gov.ph
   Subject: URF Bank A
   URF Filename: URF_Bank A.pdf

5. The live implementation of the API beginning reference period 30 June 2023 shall cover the following reports. The XML submitted shall be considered the official submission of the bank, thus FI Portal and electronic mail submissions for the mentioned reports and reference period shall be discontinued.
6. The generated XML, together with the scanned Control Prooflist (CP), and Certification Form (CF) duly signed by the authorized officials of the reporting banks shall be electronically submitted to the BSP in accordance with the following specifications.
7. A grace period for non-imposition of penalties for reporting violation shall also be observed for the first two reporting periods beginning live implementation. The same shall apply for new or enhanced reports moving forward.
8. Banks shall be advised accordingly of actions to take in case of temporary inaccessibility of the BRMS.

Implementation of the International Transaction Reporting System (ITRS)

Memorandum No. M-2023-023 provides for the revised timeline for the implementation of the ITRS:

MEMORANDUM NO. M-2023-023 Series of 2023 issued on 18 August 2023

Schedule	Activity
On or before 2 October 2023	BSP to provide the XML schema and other documentation to the banks
October 2023	BSP to conduct technical briefings for the banks
November-December 2023	Banks to conduct pilot testing
January 2024	ITRS soft launch
April 2024	ITRS full implementation

The ITRS reports shall be submitted using the Application Programming Interface (API) in Extensible Markup Language (XML) format.

This memorandum supersedes prior communications to banks on the schedule of the ITRS implementation. Furthermore, the existing FX Form 1/1A reports shall continue to be submitted regularly according to the existing policy as provided in the FX Manual, until otherwise advised by the BSP.

SEC

SEC Fees and Charges for Certain IT Related Services

SEC Memorandum Circular No. 10 promulgates the implementation of the applicable fees for IT-related services and increase in fees in securing official documents from the SEC.

SEC Memorandum Circular No. 10 dated 1 August 2023

SEC Application Program Interface (API) Service. This is a software interface that enables the SEC to provide company profile information, financial information, and other data to their clients and stakeholders through application-to-application communication. APIs are based on a programming pattern or best practice that defines the rules by which application-to-application, and not application-to-user, communications may be conducted over remote network connections such as the Internet. Through this system, it allows direct transfer of data streams without the need for user intervention, allowing real time data transfer in a secure way.

Particulars	Fees and Charges
Package A	Php10,000.00 (100 API calls - Php100.00/call)
Package B	Php50,000.00 (1,000 API calls - Php50.00/call)

1. **CIFSS e-SEARCH**. The Electronic SEC Education, Analytics, and Research Computing Hub (eSEARCH) is the main eCommerce service channel of the Commission for the transacting public's purchase and download of submitted documents to the SEC. It is mainly a research tool and discovery as well as channel for authenticated documents so as to move away from the issuing of paper-based documents. Through this system, SEC documents such General Information Sheet and Annual Financial Statement are accessible to the transacting public.

CIFFS ESEARCH CHARGES (digital copy)	
GIS, AFS, and Company Snapshot Package	Php1,000.00
Authenticated GIS, AFS, and Company Snapshot Package	Php1,500.00
GIS, *Authenticated* AFS, and Company Snapshot Package	Php1,500.00
Authenticated GIS, *Authenticated* AFS, and Company Snapshot Package	Php2,000.00
GIS, AFS, and Company Snapshot Package (Discounted Price)	Php900.00
Authenticated GIS, AFS, and Company Snapshot Package (Discounted Price)	Php1,400.00
GIS, Authenticated AFS, and Company Snapshot Package (Discounted Price)	Php1,400.00
Authenticated GIS, Authenticated AFS, and Company Snapshot Package (Discounted Price)	Php1,900.00
GIS or AFS Document	Php750.00
GIS or AFS Document (Discounted Price)	Php500.00
GIS, AFS, and Company Snapshot Package	Php1,000.00
Note: Additional **P500.00** for authenticated copy for each type of document	

Plain and Authenticated Copy of SEC Documents. As listed under SEC MC No. 3, s. 2017, the following are the new fees and charges in securing official documents from the SEC.

Type of Document	Estimated No. of Pages	Fees and Charges
Articles of Incorporation and By-Laws	16-27	Php1,500.00
Articles of Incorporation / Amended Articles Incorporation	10-15	Php1,500.00
By-Laws/Amended By-Laws	10-15	Php1,500.00
General Information Sheet	6-10	Php1,500.00
Increase in Capital Stock	8-15	Php1,500.00
Resolution	2-4	Php1,500.00
Secretary's Certificate	2-4	Php1,500.00
Board Resolution	1-3	Php1,500.00
Registration Data Sheet	2-3	Php1,500.00
Deed of Assignment	1-3	Php1,500.00
Other Documents aside from the above		Php50.00/page

Authenticated Copy of SEC Documents

Type of Document	Estimated No. of Pages	Fees and Charges
Articles of Incorporation and By-Laws	16-27	Php2,000.00
Articles of Incorporation / Amended Articles Incorporation	10-15	Php2,000.00
By-Laws/Amended By-Laws	10-15	Php2,000.00
General Information Sheet	6-10	Php2,000.00
Increase in Capital Stock	8-15	Php2,000.00
Resolution	2-4	Php2,000.00
Secretary's Certificate	2-4	Php2,000.00
Board Resolution	1-3	Php2,000.00
Registration Data Sheet	2-3	Php2,000.00
Deed of Assignment	1-3	Php2,000.00
Other Documents aside from the above		Php100.00/page

- This Circular shall take effect immediately upon completion of its publication in a newspaper for general circulation.

Editor's note: This Circular was published in Philippine Daily Inquirer *and* Manila Standard *on 3 August 2023.*

SEC Memorandum Circular No. 11 states that the SEC approved proposed amendments to the 2015 Implementing Rules and Regulations of the Securities Regulation Code (the "2015 SRC Rules") and SEC Memorandum Circular ("MC") No. 16, series of 2004, relative to the settlement cycle from T+3 to T+2.

Amendments on the 2015 Implementing Rules and Regulations of the Securities Regulation Code (The 2015 SRC Rules)

SEC Memorandum Circular No. 11

The subject amendments shall apply to transactions to be executed starting 24 August 2023.

- Amendment to the 2015 SRC Rules are as follows:

Rule	Amended Provision
SRC Rule 49.1.1.5.3	In computing for Net Liquid Capital (NLC), the adjustment related to all unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in special omnibus accounts or similar accounts carried on behalf of another Broker Dealer, after application of calls for margin, marks to the market or other required deposits are now amended to those that are outstanding for **two** business days or less. Likewise, deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits are now amended to those outstanding for **two** business days or less, except deficits in cash accounts for which not more than one extension respecting a specified securities transaction has been requested and granted.
SRC Rule 50	Purchases by a customer in a cash account shall now be paid in full within two business days after the trade date.
SRC Rule 52	The classification of aging schedule under 52.1.11.2 indicating the monetary and securities collateral values of the customers' receivable as of end of month, is now revised as follows: Classification T+0 to **T+1** **T+2** to **T+12** **T+13** to T+30 T+31 up The schedule under 52.1.11.3 to appropriate Allowance for Doubtful Accounts (ADA) for Broker Dealer is now classified as follows: Classification T+0 to **T+1** **T+2** to **T+12** **T+13** to T+30 T+31 up

- Amendment to SEC Memorandum Circular No. 16 series of 2004 are as follows:

<table>
<tr><th>Section</th><th>Amended Provision</th></tr>
<tr><td>Subsection III Computation of Net Liquid Capital (NLC), paragraph C</td><td>In computing for Net Liquid Capital (NLC), the adjustment related to all unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in special omnibus accounts or similar accounts carried on behalf of another Broker Dealer, after application of calls for margin, marks to the market or other required deposits are now amended to those that are outstanding for <u>two</u> business days or less.

Likewise, deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits are now amended to those outstanding for <u>two</u> business days or less, except deficits in cash accounts for which not more than one extension respecting a specified securities transaction has been requested and granted.</td></tr>
<tr><td>Schedule for Part 4 Schedule for Specific and General Provisioning for Overdue Accounts</td><td>Customer accounts qualifying as non-performing accounts related to contra losses and overdue purchase contracts is now revised as follows:

<table>
<tr><th>Type of Account</th><th>Criteria for Classification of account as non-performing</th><th>Date of Classification</th></tr>
<tr><td>1. Contra losses</td><td>When the account remains unpaid starting from T+3 or more from the date of contra transaction</td><td>T+3</td></tr>
<tr><td>2. Overdue purchase contracts</td><td>When the account remains unpaid starting from T+13</td><td>T+13 or when the broker exercises its right of mandatory close out over the securities serving as collateral</td></tr>
</table>

Specific provisions for bad and doubtful accounts made for contra losses and overdue purchase is now revised as follows:

<table>
<tr><th>Type of Accounts</th><th>Period When Account is overdue</th><th>Classification</th></tr>
<tr><td>1. Contra losses</td><td>a. T+3 to 30 calendar days
b. over 30 calendar days</td><td>a. doubtful
b. loss</td></tr>
<tr><td>2. Overdue purchase contracts</td><td>a. T+3 to 30 calendar days
b. over 30 calendar days</td><td>a. doubtful
b. loss</td></tr>
</table>
</td></tr>
</table>

Section	Amended Provision
Schedule B.2 Counterparty Risk Requirement Counterparty Risk Factors for Unsettled Agency Trades, SRC Rule 49 (H), Subsection VI	The time period for application of percentage under a sell contract is now classified as follows: a) T to **T+1** of clients; b) **T+2** to **T+12** of clients; and, c) Beyond **T+12** of clients. Likewise, the time period for application of percentage under a buy contract is now classified as follows: a) T to **T+1** of clients; b) **T+2** to **T+12** of clients; and, c) Beyond **T+12** of clients.
Schedule B.3 Counterparty Risk Requirement Counterparty Risk Factors for Unsettled Principal Trades, SRC Rule 49 (H), Subsection VI	The time period for application of percentage under a sell contract is now classified as follows: a) T to **T+1** of counterparties (i.e., Exchange/Clearing agency or BD); b) **T+2** to **T+12** of clients; and, c) Beyond **T+12** of counterparties. Likewise, the time period for application of percentage under a buy contract is now classified as follows: a) T to **T+1** of counterparties; b) **T+2** to **T+12** of counterparties; and, c) Beyond **T+12** of counterparties.
Schedule B.4 Counterparty Risk Factors for Debts/ Loans, Contra Loss, And Other Debts Due, SRC Rule 49 (H), Subsection VI	The debt aging period under schedule B.4 is now revised as follows: **Debt/Aging Period** Less than **1 day** (or T+0 to **T+1**) **2-12** days (or **T+2** to **T+12**) **13**-30 days Over 30 days

Submission of Proof of Anti-Money Laundering Council (AMLC) Registration for all SEC Supervised/Regulated Covered Persons (CP) Who Have Not Registered with AMLC Online Registration System

SEC Notice issued on 28 July 2023 states that specified covered persons (CPs) are required to register with the AMLC portal and submit a proof of registration to the SEC.

SEC Notice issued on 28 July 2023

The CPs are:

- Securities dealers, brokers, salesmen, investment houses and other similar persons managing securities or rendering services as investment agent, advisor, or consultant;
- Mutual funds, close-end investment companies, common trust funds, and other similar persons;
- REIT fund managers;
- All financing companies and lending companies; and,
- Other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised or regulated by the SEC

- The procedure in submitting the AMLC Registration proof can be accessed on the following link: *https://www.sec.gov.ph/notices/registration-with-the-anti-money-laundering-council-amlc-and-submission-of-proof-of-registration/#gsc.tab=0*

- Compliance Officers are required to update their CP's user account information in the AMLC Online Registration System every two years. The proof of the updated AMLC registration shall likewise be submitted to the SEC.

Supreme Court Case

Assessment

Company A vs. Commissioner of Internal Revenue (CIR), Supreme Court (Third Division) G.R. 257697, promulgated on 12 April 2023

The application of Company B to Company A's case is not violative of the principle of non-retroactivity of laws and rulings. Unless Company F overturned a prior doctrine of the Court, its retroactive application would not be prejudicial to taxpayers. The Court's interpretation of a statute merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

Facts:

Based on the Supreme Court's ruling in the case of CIR vs. Company B (G.R. No. 163653, 19 July 2011) ("Company B case"), that instructional letters, as well as journal and cash vouchers evidencing advances, are akin to loan agreements subject Documentary Stamp Tax (DST), the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011 on 6 October 2011, which disseminated relevant portions of the Supreme Court Decision in the Company B case to all internal revenue officials and employees, and enjoined them to assess deficiency DST, if warranted, on these kinds of transactions.

Company A received a Preliminary Assessment Notice (PAN) covering taxable year 2009 which includes finding on DST assessed based on Company A's advances to related parties. Company A filed a reply to the PAN, claiming that with respect to DST deficiency, its advances to related parties are not considered loans, and that the BIR has no right to assess them because the Company B case should not be given a retroactive application as doing so will be prejudicial to taxpayers. While Company A paid the proposed deficiency taxes, it subsequently filed a refund claim which was not acted upon by the BIR and denied by the Court of Tax Appeals upon appeal.

Company A argues that the Company B case was retroactively applied by the BIR to the prejudice of taxpayers. According to Company A, the ruling in Company B case may not be applied to the advances subject of the present case without violating the non-retroactivity of court decisions. Furthermore, Company A mainly claims that the prevailing rule in 2009, when the subject transactions were entered, was that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under the Tax Code, based on the Minute Resolution of the Supreme Court in the case of Commissioner of Internal Revenue v. APC Group, Inc., which upheld the decision of the Court of Appeals in CIR vs. APC Group Inc. (CA-G.R. SP-69869).

The CIR alleges that its deficiency assessment for DST against Company A was not illegal nor erroneous because the same was based on Section 179 of the Tax Code. Moreover, the CIR claimed that there is no retroactive application of the Filinvest case because it merely interpreted a pre-existing law.

Issues:

Is the BIR's application of the Company B case as basis for the DST assessment on Company A violative of the principle of non-retroactivity of laws and rulings that will prejudice taxpayers?

Ruling:

No, the BIR's application of the Company B case to Company A's case is not violative of the principle of non-retroactivity of laws and rulings. Unless Company B overturned a prior doctrine of the Court, its retroactive application would not be prejudicial to taxpayers. The Supreme Court's interpretation of a statute merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

In this case, Company A failed to establish the existence of a ruling, prior to the Company B case, which declared that intercompany loans and advances through memos and vouchers do not constitute debt instruments subject to DST under Section 179 of the NIRC.

Company A relies heavily on the Supreme Court Resolution in CIR v. APC Group, Inc. (APC), which upheld that memos and vouchers evidencing inter-company advances are exempt from DST. It must be noted that APC was decided through a Minute Resolution. Accordingly, considering that Company A was not a party in the case of APC, Company A cannot invoke the Court's pronouncement in that case, as the same was merely a Minute Resolution and is thus not a binding precedent.

Court of Tax Appeals

Refund/ Issuance of Tax Credit

Petitioners v. CIR
CTA Case No. 10151, promulgated 20 July 2023

Facts:

On 14 December 2017, the Petitioners paid capital gains tax for the sale of a residential property. Subsequently, on 3 July 2019, the Petitioners filed their claim for refund of capital gains tax for taxable year 2017. On the same date, then Revenue District Officer denied the Petioners' claim for refund, on the grounds that "the sellers did not file a sworn declaration of intent/ escrow agreement." The present Petition for Review was filed on 15 August 2019.

Issue:

Were the Petitioners entitled to its claim for refund of capital gains tax?

Ruling:

No.

The Petitioners were not able to show that there was an erroneous or illegal capital gains tax which was collected by the government.

The capital gains, based on Section 24 (D) of the Tax Code, as amended, presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including patio de retro sales and other forms of conditional sales, by individuals, including estates and trusts, are subject to the capital gains tax of 6%. However, the capital gains presumed to have been realized from the sale or disposition of a principal residence by natural persons shall be exempt from the said capital gains tax upon the fulfillment of the following conditions, such as: (a) the proceeds of the sale or disposition are fully utilized in acquiring or constructing a new principal residence within 18 calendar months from the date of

It is noteworthy that the capital gains tax exemption under Section 24(D)(2) of the Tax Code, as amended, is conditioned on the fact that "the proceeds of the sale or disposition are fully utilized in acquiring or constructing a new principal residence within eighteen calendar months from the date of sale or disposition."

The Secretary of Finance, upon the recommendation of the BIR, came up with the requirement, among others, of an Escrow Agreement between the concerned Revenue District Officer, the seller/transferor, and the concerned Authorized Agent Bank, involving the amount equivalent to 6% capital gains tax deposited in cash or manager's check in an interest-bearing account with the said Authorized Agent Bank. With the said Escrow Agreement, the seller/transferor would not be required to pay the capital gains tax upon the filing of the pertinent Capital Gains Tax Returns.

sale or disposition; (b) the historical cost or adjusted basis of the real property sold or disposed shall be carried over to the new principal residence built or acquired; (c) the BIR shall have been July notified by the taxpayer within 30 days from the date of sale or disposition through a prescribed return of his or her intention to avail of the said tax exemption; (d) the said tax exemption can only be availed of once every 10 years; and (e) if there is no full utilization of the proceeds of sale or disposition, the portion of the gain presumed to have been realized from the sale or disposition shall be subject to capital gains tax.

Implementing the aforequoted Section 24 (D) relative to the granting of exemption from the capital gains tax, RR No. 13-99, as amended by RR No. 14-2000, was issued.

In this case, there is no indication that the Petitioners fulfilled the third condition for the tax exemption granted under Section 24(D)(2) of the Tax Code, as amended, i.e., the BIR has been duly notified by Company A within 30 days from the date of sale or disposition through a prescribed return of their intention to avail of the said tax exemption.

In fact, when the prescribed return (i.e., BIR Form 1706 – Capital Gains Tax Return) for the transaction was filed on 14 December 2017, or nine days from the date of the subject Deed of Absolute Sale, the Peitioners did not treat the transaction as an exempt sale. Moreover, the same tax return is to the effect that the property being sold is not the principal residence of the Peitioners and the latter does not intend to construct or acquire a new principal residence within 18 months from the date of disposition sale, consistent with the said information that the said transaction is not an exempt sale.

Thus, on this score alone, there being no notification to the BIR of the Petitioners' intention to avail of the capital gains tax exemption under Section 24 (D) (2) of the Tax Code, as amended, the refund claim must fail.

Furthermore, the failure of the Petitioners to submit the required Escrow Agreement, as a condition for the said capital gains tax exemption, as set forth in the above-quoted Section 3 of RR No. 13-99, as amended by RR No. 14-2000, is likewise fatal to its refund claim.

It is noteworthy that the capital gains tax exemption under Section 24(D)(2) of the Tax Code, as amended, is conditioned on the fact that "the proceeds of the sale or disposition are fully utilized in acquiring or constructing a new principal residence within eighteen calendar months from the date of sale or disposition." Thus, as of the date of sale or disposition of the principal residence, and even within the prescribed period of filing the pertinent Capital Gains Tax Returns, which is 30 days following such sale or disposition, it is still impossible to determine whether the seller or sellers has/have fully utilized the proceeds thereof, and thus, the issue of whether or not the transaction should already be subjected to the capital gains tax or should already be treated as exempt therefrom likewise cannot yet be determined.

The Secretary of Finance, upon the recommendation of the BIR, came up with the requirement, among others, of an Escrow Agreement between the concerned Revenue District Officer, the seller/transferor, and the concerned Authorized Agent Bank, involving the amount equivalent to 6% capital gains tax deposited in cash or manager's check in an interest-bearing account with the said Authorized Agent Bank. With the said Escrow Agreement, the seller/transferor would not be required to pay the capital gains tax upon the filing of the pertinent Capital Gains Tax Returns.

The mineral products of a concerned contractor under an FTAA with the government is subject to excise tax under Section 151 of the Tax Code, as amended. By way of exception, Section 81 of Republic Act No. 7942 provides that the government's share including said excise tax, may not be collected by the latter from an FTAA contractor, if it has not fully recovered its pre-operating expenses, exploration and development expenditures. The recovery period, or the period in which Company B may recover its pre-operating and property expenses is provided in the FTAA dated 20 June 1994.

Section 7 of the DAO No. 12-2007 provides that the recovery period or the period within which the government may not collect its share, including the excise tax, is maximum period of five years, counted from the date of commencement of commercial production (first circumstance) or the date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses (second circumstance) whichever comes first.

DAO No. 96-40 defined the term "commercial production" as reckoned from the date of commercial operations as declared by the contractor or as stated in the feasibility study, whichever comes first.

DAO No. 12-2007 commands that all recoverable pre-operating expenses must be approved by the Secretary of the Department of Environment and Natural Resources, upon recommendation of the Director of the MGB. Additionally, these expenses must be subjected to verification by the government or its representative or auditor.

Within 30 days from the lapse of the 18-month period from the date of sale or disposition of the old principal residence, the seller/transferor is required to submit to the concerned Revenue District Officer certain documents to establish, among others, the fact that the subject proceeds of the sale or disposition have been fully utilized. Upon a showing of such fact, the concerned Revenue District Officer shall issue, within a 15-day period from the submission of the said documents, a certification to that effect to the concerned Authorized Agent Bank releasing the Escrow on the aforesaid bank deposit in favor of the seller/ transferor.

Upon failure of the seller/ transferor to show that the subject proceeds of the sale or disposition have been utilized in the acquisition or construction of the said seller/ transferor's new principal residence within 18 calendar months from the date of same sale or disposition, within 30 from the same 18-month period, the same seller/ transferor shall be treated as deficient in the payment of the corresponding capital gains tax. In such case, the provisions of RR No. 12-99 shall then be observed in the eventual issuance of a formal assessment notice for the said capital gains tax, inclusive of interest thereto. Upon the finality of the deficiency tax assessment, the deposit in escrow, inclusive of its interest earnings, shall be forfeited and applied against the taxpayer's deficiency capital gain tax liability. The depository bank or the concerned Authorized Agent Bank shall be informed of this action, and shall, upon demand in writing by the BIR or his duly authorized representative, turn over the money for application of payment of the taxpayer's deficiency tax liability. If the same is insufficient to cover the entire amount assessed, the seller/ transferor shall remain liable for the remaining balance of the assessment. In case there is an excess in the deposit in escrow, the same shall be returned by the concerned Authorized Agent Bank to the seller/transferor, upon written authorization from the BIR or his duly authorized representative.

Assessment

Company B v. CIR
CTA Case No. 9736, promulgated 10 August 2023

Facts:

Company B received a Letter of Authority (LOA) dated 24 November 2014, authorizing the BIR to examine the books of accounts and other accounting records of Company B for all internal revenue taxes for the period 1 January 2013 to 31 December 2013.

On 13 December 2016, Company B received the BIR's undated Preliminary Assessment Notice (PAN), with Details of Discrepancies.

On 28 December 2016, Company B filed its protest to the PAN, refuting the findings of the BIR.

On 1 February 2017, Company B received the BIR's Formal Letter of Demand (FLD) with Details of Discrepancies.

On 2 March 2017, Company B filed its Protest to the FLD.

On 20 November 2017, Company B received the BIR's Final Decision on Disputed Assessment (FDDA).

On 29 November 2017, Company B paid the deficiency tax assessments, except for the Excise Tax assessment.

On 29 December 2017, Company B filed a Petition for Review with the Court of Tax Appeals.

Issue:

Was Company B liable for deficiency excise tax?

Ruling:

Yes. Company B is liable for the deficiency excise tax assessment covering taxable year 2013.

The BIR assessed Company B for excise tax covering taxable year 2013 because its sale of dore gold and metal concentrates are subject to 2% excise tax, pursuant to Section 151 (A) (2) of the Tax Code, as amended, and Revenue Memorandum Circular No. 17-2013.

The mineral products of a concerned contractor under an FTAA with the government is subject to excise tax under Section 151 of the Tax Code, as amended. By way of exception, Section 81 of Republic Act No. 7942 provides that the government's share including said excise tax, may not be collected by the latter from an FTAA contractor, if it has not fully recovered its pre-operating expenses, exploration and development expenditures. The recovery period, or the period in which Company B may recover its pre-operating and property expenses is provided in the FTAA dated 20 June 1994.

Meanwhile, Section 112 of Republic Act No. 7942 recognizes valid and existing FTAAs. Yet the same provision contained a proviso that said FTAAs shall comply with the applicable provisions of the said law and its implementing rules and regulations.

Section 7 of the DAO No. 12-2007 provides that the recovery period or the period within which the government may not collect its share, including the excise tax, is maximum period of five years, counted from the date of commencement of commercial production (first circumstance) or the date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses (second circumstance) whichever comes first.

DAO No. 96-40 defined the term "commercial production" as reckoned from the date of commercial operations as declared by the contractor or as stated in the feasibility study, whichever comes first.

DAO No. 12-2007 commands that all recoverable pre-operating expenses must be approved by the Secretary of the Department of Environment and Natural Resources, upon recommendation of the Director of the MGB. Additionally, these expenses must be subjected to verification by the government or its representative or auditor.

There was no proof that the recoverable pre-operating expenses was duly approved by the Secretary of the Department of Environment and Natural Resources, as recommended by the Director of the MGB, nor is it shown that these expenses were validated by the government or its designated representative or auditor. Without such approval and validation, the Court of Tax Appeals cannot compare said unapproved recoverable pre-operating expenses with Company B's net cash flows. Therefore, the date when the second circumstance occurred may not be determined with certainty.

The date of commencement of commercial operations started on 11 October 2005, or the date when MGB approved Company B's partial feasibility study. Counting five years therefrom, the recovery period ended on 11 October 2010. As such, there is no legal impediment for the BIR assess Company B excise tax covering taxable year 2013.

Based on the foregoing provisions, an electric cooperative registered with the NEA has the option to register with the Cooperative Development Authority (CDA), and in case it opts not to do so, such electric cooperative shall not be entitled to the benefits and privileges under RA No. 9520. In contrast, should an electric cooperative opt to register with the CDA, it shall no longer be covered by PD No. 269, as amended.

Thus, while a delineation was created between the coverage of PD No. 269, as amended, and RA Nos. 6938 and 9520, such a system is not indicative of the supposed continuation of the tax exemption privileges of electric cooperatives. In other words, the provisions of RA Nos. 6938 and 9520 are not sufficient for this Court to rule that the tax-exempt status of electric cooperatives remains. An examination of PD No. 269, and laws and issuances related thereto, must still be made, and not simply rely on the provisions of RA Nos. 6938 and 9520, as was substantially done in Revenue Memorandum Circular No. 74-2013.

Based on PD No. 269, electric cooperatives have been granted income tax exemption, provided they operate in conformity with the purposes and provisions of PD No. 269.

Assessment

Company C v. BIR, REVENUE REGION No.4, represented by Respondent T, Regional Director
CTA Case No. 10165, promulgated 1 August 2023

Facts:

The BIR issued to Company C the Preliminary Assessment Notice (PAN) dated 8 November 2018, that assessed the latter a total deficiency income tax for taxable year 2016.

On 21 December 2018, Company B filed with the BIR the letter dated 19 December 2018, requesting for additional time to attend the matter involving the said PAN.

The BIR denied Company C's letter dated 7 January 2019, and informed Company C that the FLD and Final Assessment Notice (FAN) shall be issued accordingly. On the same day, the assailed FLD with Details of Discrepancy, and Assessment Notices were issued, assessing
Company C of deficiency income tax for taxable year 2016.

Company C then filed its Protest-Letter Request for Reconsideration on 21 February 2019.

The BIR sent a letter to Company C informing it that its protest has been denied, and that the Final Decision on Disputed Assessment (FDDA) will be issued accordingly. The FDDA dated
9 August 2019, was then issued.

Claiming failure on the part of the BIR to act on Company C's Protest-Letter, the present Petition for Review was filed on 11 September 2019.

Issue:

Was Company C liable to pay the assessed deficiency income tax for taxable year 2016?

Ruling:

Yes.

Company C claims that the BIR failed to consider the provisions of Republic Act (RA) Nos. 69385 and 9520 vis-a-vis electric cooperatives. Particularly, Company C argues that a plain reading of Article 127 of RA No. 6938 and Article 143 of RA No. 9520 shows that PD No. 26959 has not been amended or repealed by the enactment of the Cooperative Code, and thus, the exemption from paying income taxes for electric cooperatives under Section 39 of PD No. 269 still applies.

Based on the foregoing provisions, an electric cooperative registered with the NEA has the option to register with the Cooperative Development Authority (CDA), and in case it opts not to do so, such electric cooperative shall not be entitled to the benefits and privileges under RA No. 9520. In contrast, should an electric cooperative opt to register with the CDA, it shall no longer be covered by PD No. 269, as amended.

Thus, while a delineation was created between the coverage of PD No. 269, as amended, and RA Nos. 6938 and 9520, such a system is not indicative of the supposed continuation of the tax exemption privileges of electric cooperatives. In other words, the provisions of RA Nos. 6938 and 9520 are not sufficient for this Court to rule that the tax-exempt status of electric cooperatives remains. An examination of PD No. 269, and laws and issuances related thereto, must still be made, and not simply rely on the provisions of RA Nos. 6938 and 9520, as was substantially done in Revenue Memorandum Circular No. 74-2013.

Based on PD No. 269, electric cooperatives have been granted income tax exemption, provided they operate in conformity with the purposes and provisions of PD No. 269.

Subsequently, however, PD No. 1955, which was issued on 10 October 1984, withdrew all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges granted to private business enterprises and/or persons engaged in any economic activity, except those enjoyed by certain entities, transactions, and industries (but not including electric cooperatives).

Nevertheless, PD No. 2008, which was promulgated on 8 January 1986, decreed that "those cooperatives whose tax exemption privileges under this Decree have already expired shall continue to enjoy such privileges but in no case shall extension go beyond 31 December 1991".

Thereafter, Executive Order (EO) No. 93,64 which was issued on 17 December 1986, again withdrew all tax and duty incentives granted to government and private entities, except those enjoyed by certain entities, transactions, and industries (but again not including electric cooperatives).

However, the implementation of EO No. 93, insofar as all electric, agricultural, irrigation and local waterworks cooperatives are concerned, was suspended by Memorandum Order No. 65 dated 21 January 1987, until 30 June 1987.

On 14 June 1987, the FIRB issued Resolution No. 24-87, which restored, with a qualification, the tax and duty exemption privileges of electric cooperatives under PD No. 269, effective 1 July 1987.

Thus, pursuant to the authority granted to it under EO No. 93, the FIRB restored the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of PD No. 269, as amended, but revised the scope and coverage of the privileges that have been restored, by stating that the "income from ... electric service operations and other sources ... shall remain taxable". In other words, while there was a restoration of the tax exemption privileges of electric cooperatives under PD No. 269, as amended, such restoration does not include tax exemption from the taxation of income from electric service operations and other sources.

On 7 May 2013, Congress enacted RA No. 10531, which introduced amendments to PD No. 269, as amended. There is nothing in RA No. 10531 which states that the income tax exemption of electric cooperatives under PD No. 269, as amended, has been totally reverted or restored. Thus, at present, electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements.

Moreover, non-compliance with or a defect in the verification does not necessarily render the pleading fatally defective and it may be submitted or corrected afterwards. On the other hand, non-compliance or defect in the certification of non-forum shopping is generally not curable by its subsequent submission or a correction thereof, unless there is a need to relax the rule on the ground of substantial compliance or when special circumstances are present. This interpretation was amplified by Revenue Memorandum Circular No. 74-2013, which circularized a BIR ruling regarding the income tax exemption of electric cooperatives registered with the NEA.

Correspondingly, Company C, being an electric cooperative registered with the NEA, cannot claim exemption from taxation on its income from electric service operations and other sources, pursuant to FIRB Resolution No. 24-87.

Refund/ Issuance of Tax Credit

Company D v. COMMISSIONER OF INTERNAL REVENUE
CTA EB No. 2622, promulgated 15 August 2023

The fiscal and non-fiscal incentives are granted to FTAA contractors to help support the latter's cash flow during the recovery period, the most critical phase, and that it is only after such period when normal taxes and fees must be paid to the government.

Any tax, including DST, shall accrue from the execution of the FTAA, but shall be paid only after the recovery period.

Facts:

On 19 September 2009, Company D entered into a Financial or Technical Assistance Agreement (FTAA) No. 04-2009-11 with the Republic of the Philippines, in accordance with Republic Act (RA) No. 7942.

Under the FTAA, Company D agreed to join and assist the government in the large-scale exploration, development, and commercial utilization of minerals in exchange for an exclusive right to conduct mining operations in the area.

On 18 October 2011, the Secretary of the Department of Environment and Natural Resources (DENR) issued an Order approving the Declaration of Mining Project Feasibility (DMPF) for the Runruno Gold-Molybdenum Project of Company D.

Related to the said FTAA, Company D, together with Metals Exploration Pic, and Metals Exploration Pte. Ltd., entered into an Amendment Deed with several financial institutions, covering a total loan commitment on 15 December 2016. Company D paid DST for the said transaction on 3 January 2017.

On 9 and 16 September 2016, Company D issued letters to the Director of the Mines and Geosciences Bureau (MGB), the Secretary of DENR, and the Undersecretary and Concurrent Director of MGB, stating its Declaration of Commencement of Commercial Operations on 9 September 2016. The same was approved by the DENR on 17 July 2017.

On 14 March 2018, Company D filed with the BIR an administrative claim for refund of the alleged erroneously paid DST on the Amendment Deed dated 15 December 2016. In the said claim, Company D primarily argued that the transaction occurred during its period of exemption, pursuant to the RA No. 7942, its implementing rule, and FCF's FTAA.

Company D then filed a Petition for Review before the Court of Tax Appeals on 3 January 2019.

Issue:

Was Company D entitled to its claim for refund of erroneously paid documentary stamp tax?

Ruling:

No.

Under the 1987 Philippine Constitution, the exploration, development, and utilization of the country's natural resources shall be under the full control and supervision of the State. In accordance thereto, RA No. 7942 or the Philippine Mining Ad was signed into law in 1995 for purposes of instituting a new system of exploration, development, utilization and conversation of mineral resources.

Accordingly, RA No. 7942 allows qualified persons or entities with technical and financial capabilities to undertake large-scale exploration, development and utilization of mineral resources to enter into an FTAA with the government through the DENR. It is in this regard that herein Company D and the DENR entered into an FTAA on 19 September 2009.

The same law provides for certain measures to ensure equitable sharing of benefits between the government and the private sector in order to recognize their combined efforts in undertaking mineral resource activities. Section 81 thereof determines the Government Share in mineral agreements other than mineral production sharing agreements.

Pursuant to the foregoing, DENR issued Administrative Order (DAO) No. 2007-12, which provides for the guidelines on the fiscal regime of FTAAs. Section 4 thereof discusses the coverage of the Government Share in an FTAA.

The collection of the Government Share in FTAAs shall only commence after the FTAA contractor has fully recovered its pre-operating expenses, exploration, and development costs. Thus, the contractor is only liable to pay DST after the recovery period.

Section 97 of RA No. 7942 provides that the permit of an FTAA contractor may be cancelled if there is failure to pay taxes and fees due to the government for two consecutive years. "[D]ue to the government" means that these tax payments should only cover those tax types that are mandated under the law to be paid by the contractor on a particular period in relation to the stages of the FTAA.

Note that Section 81 of RA 7942 enumerates the specific tax types which must be paid by the contractor from the date of approval of the Declaration of Mining Project Feasibility (DMPF) up to the end of the recovery period, or after recovery period. Placing a penalty provision in Section 97 for failure to pay taxes does not negate the exemption granted under the law. It merely recognizes that specific taxes are due in certain stages of the FTAA, and that eventually, after the recovery period, exemptions shall be lifted.

In addition, the intent of Section 81 of RA 7942 was interpreted by the DENR in DAO 2007-12 upon declaring in the administrative order that the same aims (1) to achieve an equitable sharing among the national and local governments, the FT AA Contractor, and concerned communities of the benefits derived from mineral resources to ensure sustainable mineral resources development; and (2) to ensure a fair, equitable, competitive, and stable investment regime for the large scale exploration, development and commercial utilization of minerals in accordance with the provisions of the RA No. 7942 and its implementing rules and regulations.

The fiscal and non-fiscal incentives are granted to FTAA contractors to help support the latter's cash flow during the recovery period, the most critical phase, and that it is only after such period when normal taxes and fees must be paid to the government.

Any tax, including DST, shall accrue from the execution of the FTAA, but shall be paid only after the recovery period. This appears to suggest that at the end of such period, Company D should compute all back taxes, and file the corresponding tax returns covering those enumerated in the Government Share, from the date of approval of the DMPF on 18 October 2011 until the end of the recovery period, which at the latest should end on 17 July 2022.

Section 81 of RA 7942, Section 4(b) of DAO 2007-12 and Clause 9.2 of the FTAA categorically mandate that it is only after the recovery period when DST must be paid by Company D. The Date of Commencement of Commercial Production becomes relevant only for the purpose of determining when the recovery period shall end. The same date, however, does not determine the start of Company D's entitlement to the tax exemptions. Company D was already entitled to DST exemption from the date of approval of the DMPF on 18 October 2011, and the same would be lifted at the end of the recovery period.

The recovery period is reckoned from the date of the commencement of commercial production, which is the date of written declaration by the FTAA contractor to start commercial operations, after the conduct of the test run and its approval by the regional office concerned. Here, Company D declared its Commencement of Commercial Operations on 9 September 2016, and the same was approved on 17 July 2017. Thus, the official date of commencement of commercial production is on such later date.

Meanwhile, the recovery period shall only last for a maximum period of five years or until the aggregate of the net cash flows from the mining operations is equal to the aggregate of its pre-operating expenses, whichever comes first. Company D's recovery period, in particular, would run from 17 July 2017 up to 17 July 2022, at the maximum.

To recall, the DMPF was approved on 18 October 2011. Moreover, the Amendment Deed subjected to DST in the instant case was executed on 15 December 2016, which falls even before the recovery period commenced. Thus, the subject transaction is well within the exemption period granted to Company D under the law.

Furthermore, the Tax Exemption Certificates issued by Mines and Geosciences Bureau are the final written attestations on Company D's exemption from DST. The Mines and Geosciences Bureau is a line bureau under the DENR primarily responsible for the implementation of RA NO. 7942.

While Company D is exempt from DST at the time of the execution of the Amendment Deed, it waived its entitlement to such exemption. Hence, Company D is not entitled to the refund claimed under the instant case.

The DST on loan transactions shall be paid by any of the parties thereto. However, when one party enjoys exemption from tax, the other party who is not exempt shall be the one liable to pay the DST.

In this case, since Company D enjoys DST exemption, the liability thereof would fall upon the other non-exempt parties to the Amendment Deed, in the absence of a clear stipulation to the contrary in such agreement.

Such a stipulation to the contrary, however, is present in Clause 13 of the Amendment Deed. The parties to the Amendment Deed explicitly agreed that the "Borrower" shall pay the DST on the transaction. The term "Borrower" refers solely to Company D, as stated in the declaration of the parties. The DST paid by Company D thus cannot be deemed made erroneously. Hence, the refund claim of Company D must fail.

SGV | Building a better working world

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

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

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

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

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

APAC No. 10001158
Expiry date: no expiry

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

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

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

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

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