Tax Bulletin

October 2022

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Tax Refund/Issuance of Tax Credit	
A VAT invoice is required only for domestic purchase of goods and properties, while an import entry or other equivalent document showing actual payment of VAT on imported goods is required for importation of goods. In order to be entitled to input tax credits, importation of goods must be supported by Import Entry and Internal Revenue Declaration (IEIRD) or Single Administrative Documents (SADs) and Statement of Settlement of Duties and Taxes (SSDTs), while domestic purchases of goods must be supported by VAT invoices showing the information required under Sections 113 and 237 of the NIRC of 1997, as amended.	**20**

BIR Administrative Requirements

RR No. 13-2022 prescribes the guidelines, procedures, and requirements for the proper income tax treatment of equity-based compensation of any kind.

RR No. 13-2022 dated on 7 October 2022

- The equity grants under the equity plans, once exercised or availed of by the grantee-employees, are subject to withholding tax on compensation (WTC) under Section 32 (A) of the Tax Code, as amended, as implemented by RR No. 2-98, as amended.
- WTC is applicable regardless of employment status of the grantee-employee who could either be rank-and-file or hold a supervisory or managerial position considering that Section 32 and all applicable tax issuances do not make a distinction for purposes of applying the tax implication on all forms of compensation, including equity-based compensation.
- This RR will take effect 15 days from publication in the Official Gazette or in a newspaper of general circulation.
- RR No. 13-2022 was published in the Manila Times on 14 October 2022.

RMO No. 40-2022 prescribes the guidelines and procedures in the conduct of enforcement operations, forfeiture and prosecution of cases relative to the unlicensed/ illicit/unauthorized production, importation, trade sale or possession of articles subject to Excise Tax including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their production and the unlicensed/illicit/unauthorized use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags.

RMO No. 40-2022 dated 29 September 2022

- A BIR STRIKE GROUP shall be composed of two Teams to be constituted by the following officers who shall be responsible in the conduct of the undertaking:

Over-all Head:	Deputy Commissioner of Internal Revenue (DCIR) Operations Group
Team I:	Large Taxpayers
Head:	ACIR, Large Taxpayers Service (LTS)
Co-Head:	ACIR, Enforcement & Advocacy Service (EAS)
Asst. Head:	HREA, LTS-Excise
Co-Asst. Head:	HREA, EAS
Members:	Chief, National Investigation Division (NID) and Representatives
	Chief, Excise LT Field Operations Division (ELTFOD) and Representatives
	Excise LT Audit Division II Representatives [Optional]
	Excise Tax Areas (EXTA) Representatives [Optional]

Team II:	Non-Large Taxpayers
Head:	Concerned Regional Director
Asst. Head:	Concerned Assistant Regional Director
Members:	Chief, Regional Investigation Division (RID) and Representatives
	Representatives from Legal Division
	Representatives from Revenue District Office (RDO) [Optional]
	Excise Tax Areas (EXTA) Representatives [Optional]

- The BIR STRIKE GROUP may request other revenue personnel from other offices to provide assistance and relevant information relative to the enforcement operation.

- All surveillance and/or enforcement activities shall be covered by Mission Orders (MOs) to be signed by the DCIR-Operations Group, ACIR, LTS or the concerned Regional Director.

- The MOs shall be issued in triplicate/quadruplicate copies to be distributed as follows:

Original	–	Revenue Officer/s (ROs) directed to conduct the surveillance, and to be attached to the report on surveillance after termination of the activity.
2nd Copy	–	Investigating Office's / Division file copy
3rd Copy	–	Issuing Office's file copy
4th Copy	–	Taxpayer's copy (in case of overt surveillance)

- The surveillance and/or enforcement activities relative to the implementation of this Order shall either be covert and/or overt surveillance.

- Covert surveillance shall be resorted to initially evaluate the factual circumstances to determine reasonable ground to believe that there is a violation of the NIRC, as amended, or its implementing rules and regulations.

- The SUBJECT of the surveillance generally comes from a confidential information or denunciation complaint filed by informers, private individuals or entities, and also from a referral of other government agencies [i.e., Bureau of Customs (BOC), National Bureau of Investigation (NBI), Philippine National Police (PNP), National Tobacco Administration (NTA), Local Government Units (LGUs)].

- In case the subject taxpayer is a registered Excise Large Taxpayer under the LTS, the said activity shall be performed by Team I (ELTFOD, NID, Excise LT Audit Division II or EXTA).

- Likewise, if the identified owner/possessor of excisable articles or machinery, etc. falls under the jurisdiction of the Revenue Region (RR), Team II (RID, EXTA and/or concerned RDO having jurisdiction over the said taxpayer) shall conduct the activity.

- All legal issues shall be referred to the Law & Legislative Division under the Legal Service at the National Office or to the Legal Division of the concerned Revenue Region, whichever is applicable.

- The resolution of the legal issues shall be prepared and issued within 10 days from the date of receipt of such request.

- The Head of the concerned BIR Strike Team shall coordinate with other government agencies and/or private individuals/entities who will be giving information relative to the activities covered by this Order.

- The team shall submit the results of the surveillance and/or enforcement activities, together with the complete set of supporting documents to the DCIR- Operations Group for evaluation and appropriate action.

- As part of their regular function, the Revenue Officers (ROs) of ELTFOD shall be conducting regular covert surveillance to uncover violations of the NIRC pertaining to Excise Tax.

- The concerned BIR Strike Team shall prepare an Accomplishment/Status Report on the Surveillance and/or Enforcement Activity that was conducted within 10 days after the close of each month, and shall submit the same to the DCIR-Operations Group.

- The DCIR-Operations Group shall then submit a consolidated Accomplishment/ Status Report within 20 days from the close of each quarter to the Commissioner of Internal Revenue.

- The guidelines and procedures on the introduction to/conduct of surveillance activities and evaluation of surveillance results as well as conduct of enforcement action based on surveillance results are specified in Section V of the Order.

RMO No. 41-2022 discontinues the issuance of TVNs for Estate Tax cases where the decedent has no registered business.

RMO No. 41-2022 dated 29 September 2022

- To comply with the "Ease of Doing Business" under RA No. 11032 in processing requests for issuance of Certificate Authorizing Registration (CAR) related to the transfer of properties left by a decedent, this Order is issued to discontinue the issuance of TVNs for Estate Tax cases where the decedent has no registered business.

RMO No. 43-2022 provides the policies, guidelines, and procedures in the issuance and use of NIRI pursuant to RR No. 10-2019. The new BIR Notice, NIRI, requires sellers, including online sellers, to issue a receipt/invoice for each service rendered/sale of goods. Online sellers and persons engaged in online business transactions are required to issue receipts/sales invoices pursuant to RMC No. 60-2020.

RMO No. 43-2022 dated September 29, 2022

- The RMO shall cover the following and shall be issued the NIRI:

  1. New Business Registrants (NBR) head office and branches by the Revenue District Office (RDO) where the taxpayer is registered.

  2. Online sellers and merchants, vloggers, social media influencers, and online content creators earning income from the platform and/or advertising.

- The "Ask for Receipt" Notice previously issued by the RDO/LT Division to registered business taxpayers based on RR No. 7-2005 shall still be valid until 30 June 2023, and it shall be replaced through staggered issuance of NIRI to existing business registrants based on the ending digit of their Taxpayer Identification Number (TIN), to wit:

TIN Ending	Month
1 and 2	Beginning 3 October 2022
3 and 4	Beginning 2 November 2022
5 and 6	Beginning 1 December 2022
7 and 8	Beginning 2 January 2023
9 and 0	Beginning 1 February 2023

- All registered business taxpayers requesting the replacement of their old "Ask for Receipt" Notice are required to update their registration information before the release of NIRI. A designated official company email address shall be required, which shall be used by BIR in serving its orders, notices, letters, communications, and other processes to taxpayers.

- The Assistant Commissioner of Client Support Service (ACIR-CSS) shall approve the initial quantity of NIRI to be released by the Property Division based on the recommendation of the Taxpayer Service Programs and Monitoring Division (TSPMD).

- The Property Division shall release or ship the NIRI approved for release by the ACIR-CSS to the concerned Regional/District Offices.

- The Chief Administrative and Human Resource Management Division (AHRMD) of the Regional Offices may accomplish and submit to TSPMD the Requisition and Issue Slip (RIS) on behalf of the Revenue District Officers of RDOs (whether co-located or not) or the RDOs may directly submit the RIS to TSPMD for their subsequent request of NIRI.

- The TSPMD shall process the RIS for NIRI received from the Regional/District Offices.

- The RMO shall take effect immediately.

RMC No. 129-2022 was issued to provide guidance for the deletion of certain medicines prescribed for mental illness previously included in the published List of VAT-Exempt Medicines under RA No. 11534 or the CREATE Act, as endorsed by the Director General of the Food and Drug Administration Dr. Samuel A. Zacate.

RMC No. 129-2022 dated 9 September 2022

Generic Name	Dosage Strength	Dosage Form
Dexmedetomidine (as Hydrochloride)	4mcg/mL	Solution for Intravenous Infusion
Dexmedetomidine (as Hydrochloride)	100mcg/mL (200mcg/2mL)	Concentrate Solution for Intravenous Infusion
Dopamine Hydrochloride	40mg/mL	Solution for Reconstitution (IV Infusion)

RMC No. 131-2022 announces the availability of the Offline Electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version 7.9.3, which is downloadable from www.bir.gov.ph and www.knowyourtaxes.ph/ebirforms.

RMC No. 131-2022 dated 27 September 2022

- The new Offline eBIRForms Package has the following modifications:

    1. Additional Alphanumeric Tax Codes (ATCs) in BIR Form No. 0605 to be used by the International Carriers in paying their taxes in reference to Revenue Memorandum Order no. 37-2022, to wit:

Type of Tax	Tax Type	ATC
Income Tax	IT	IC 080
Percentage Tax	PT	PT 041
Documentary Stamp Tax	DS	DS 010

    2. Revised Terms of Service Agreement (TOSA)

- Required official e-mail address of the taxpayer to be provided in the eBIRForms profile page. The e-mail shall be used as an additional mode of serving BIR orders, notices, letters, communications, and other processes.

RMC No. 136-2022 publishes FIRB Resolution No. 026-2022 extending the 70:30 WFH arrangement for RBEs in the IT-BPM section and allowing the transfer of registration of existing business enterprises in the IT-BPM to BOI.

RMC No. 136-2022 dated 6 October 2022

- The FIRB Resolution No. 026-2022 allows the 30% of total work force to adopt WFH arrangement for IT-BPM RBEs within the ecozone or freeport zone from 13 September 2022 until 31 December 2022.
- Affected RBEs in the IT-BPM sector may be allowed to transfer their registration to the BOI from the Investment Promotion Agency administering an economic zone or freeport zone where their project is located until 31 December 2022 to adopt 100% WFH.

RMC No. 13-2022 expounds further on the clarification made in Q and A No. 14 of RMC No. 24-2022 on cost items that fall under "other expenditures" which are indispensable to the project or activity where there were examples provided. These include expenses that are necessary or required to be incurred depending on the nature of the registered project or activity of the export enterprise.

RMC No. 137-2022 dated 14 October 2022

- The list provided in the said RMC is **not "exclusive,"** hence expenditures not listed therein may be allowed for VAT zero-rating, provided the same can be attributed directly to the registered activity of the Registered Export Enterprises (REEs).
- This is true in the case of Health Maintenance Organization (HMO) plans acquired by REEs for **employees directly involved in the operations** of their registered projects or activities and forming part of their compensation package, for their health maintenance.
- The VAT zero-rating shall **not** extend to HMO plans procured for **employees' dependents**, as well as HMO plans for **employees not directly involve**d in the operations of the registered projects or activities of the REEs.
- All REEs availing of the VAT zero-rate on their acquisition of HMO plans for employees directly involved in their registered project or activity shall provide their suppliers a detailed information on the HMO plans acquired using the format in Annex "A" to ensure that only HMO expenses for qualified employees are given VAT zero rating. This shall also be part of the documents to be submitted by the suppliers in filing the application for VAT zero-rate.

Bureau of Customs

Clarification On BOC Form No. 117 (Customs Baggage Declaration Form)

OCOM No. 117-2022 clarifies the coverage and application of the entitlement to duty and tax-exempt privilege of returning Filipinos.

Office of the Commissioner (OCOM) Memo No. 117-2022 dated 30 August 2022

- OCOM No. 117-2022 clarified the issue on the coverage and application of item No. 4 in the BOC Form No. 117 CBDF on the entitlement to a duty and tax-exempt privilege of returning Filipinos.
- It provides the Free Carrier (FCA) or Free on Board (FOB) values threshold for the exemption of personal effects and household goods of the qualified Filipinos, and such values depended on the length of stay in the foreign country, i.e., Php 350,000 for qualified Filipinos who stayed in a foreign country for at least 10 years and has not availed of this privilege for the same period; up to Php 250,000 and Php 150,000 for those whose stay abroad is at least five years or less than five years, respectively, and has not availed of such privilege for the same period or in the latter case, within 6 months prior to arrival. Additional duty and tax exemption privileges of up to Php 150,000 for a returning OFW for home appliances and other durables was given if the conditions are met.

- There is an enumerated list of excluded goods from the privileges mentioned above.

- Balikbayan boxes are entitled to a duty and tax exemption up to a certain threshold annually, provided that the goods are not in commercial quantities, nor intended for barter, sale or hire. Sole proprietors and juridical persons cannot avail of the privileges.

Amendments To CMO No. 20-2011 & Customs Special Order No. 30-2011 As Amended By CMO No. 27-2011

CMO No. 24-2022 seeks to closely monitor the importation of used engines.

Customs Memorandum Order (CMO) No. 24-2022 dated 21 September 2022

- CMO No. 24-2022 amended certain sections of Customs Special Order (CSO) No. 20-2011 and CMO No. 30-2011 to monitor the importation of used engines effectively, as follows:

    1. Section 1.4 of CSO No. 30-2011 on the database of vehicles now includes electric vehicles and used engines imported into the country.

    2. Section 4.1 of CSO No. 30-2011 now includes indorsement of electric vehicles, used imported parts/components declared as replacement, used for assembly or rebuilt purposes, commercial or otherwise, after payment of duties and taxes, to the Enforcement Motor Vehicle Monitoring Clearance Office (EMVMCO) for the issuance of "Certificate of Engines."

    3. Section 4.8 of CMO No. 20-2011 provides that Certificates of Engines shall by indorsed by the District Collector to EMVMCO for the issuance of Certification Numbers.

    4. Section 4.9 of CMO No. 20-2011 provides that all indorsements to the Land and Transportation Office (LTO) shall come from EMVMCO. No other office in the Bureau of Customs (BOC) shall directly indorse Certificates of Engines as replacement parts, unless with proper authorization from the Chief, EMVMCO.

Guidelines And Procedures For The Electronic Exchange Of The Asean Customs Declaration Document (ACDD)

CMO No. 26-2022 covers the electronic exchange of the ACDD using the BOC ACDD Operations Portal, which facilitates the exchange of import and export data between the ACDD Portal thru the PH ASW Gateway and the ASW Gateway of other AMS.

CMO No. 26-2022 dated 1 October 2022

- An exporter must register through the ACDD Portal http://acdd.customs.gov.ph. The registration shall cover the following:

    1. Verification – This can be done by encoding the Tax Identification Number (TIN) and clicking the find button.

    2. Creation of Account – once verified, an exporter may now proceed with creating an account by encoding the desired username.

    3. Consent – The exporter shall then tick on the Terms and Legal Consent checkbox and agree thereto. The Terms and Legal Consent form authorizes the BOC on the extraction of the Export Declaration SAD data from the E2M System and subsequent exchange of ACDD message with the AMS.

- The exporter shall be required to provide the following mandatory information during registration:

    1. Name of Authorized Representative;
    2. Position/designation;
    3. Contact numbers;
    4. Company Name;
    5. Address; and
    6. Country.

- Once the above details have been provided, the Exporter shall now click the Submit Registration button. A "Success" message will be displayed, and an email notification will be sent to the Exporter's email address. The email shall contain the link for access to the ACDD Dashboard and the username and temporary password.

- An exporter can view, track status, print and generate report for all the outbound ACDD messages sent under its account.

- An exporter may, at any time after its registration, withdraw its consent and terminate its participation in the exchange of ACDD message. Once the consent has been withdrawn, the exporter's ACDD account will be deactivated. An exporter has an option to reactivate its participation in the exchange of ACDD message provided it will agree again on the terms and conditions.

- CMO No. 26-2022 took effect on 5 October 2022.

PEZA

PEZA Memorandum Circular No. 2022-054 provides additional guidelines on the issuance of CETI in accordance with the CREATE Act and in relation to PEZA MC 2022-25.

PEZA Memorandum Circular No. 2022-054 dated 03 August 2022

Registered business enterprises (RBEs) shall apply for CETI within 90 days prior to the statutory deadline for filing of annual income tax return. Relatively, PEZA will issue the CETI, for each registered activity, upon verification of the RBE's compliance with the terms and conditions of its registration and target performance metrics.

PEZA Memorandum Circular No. 2022-066 extends the 70:30 WFH arrangement until 31 December 2022.

PEZA Memorandum Circular No. 2022-066 dated 05 October 2022

Extension of the 70:30 Work-From-Home (WFH) arrangement from 13 September 2022 until 31 December 2022 for registered business enterprise (RBEs) in the IT-BPM sector in accordance with FIRB Resolution No. 026-22. Affected RBEs may be allowed to transfer their registration to the Board of Investments (BOI) until 31 December 2022 and adopt up to 100% WFH arrangement. However, the monitoring of compliance and availment of the remaining incentives shall remain with the concerned Investment Promotion Agency (IPA) with jurisdiction on the RBE's location (i.e., PEZA).

Meanwhile, PEZA circularized a survey on WFH implementation to RBEs in the IT-BPM sector, which is accessible thru a link until 7 October 2022. The survey aims to gather information such as the number of RBEs who wish to retain their PEZA registration and those willing to avail of the option under FIRB Resolution NO. 026-22.

Board of Investment

BOI amends the specific guidelines on registration of energy efficiency projects covered by Energy Efficiency and Conservation Act (RA No. 11285) for purposes of entitlement to incentives under the CREATE Act.

BOI Memorandum Circular No. 2022-008 dated 8 August 2022

Specific Guidelines for registration of Energy Efficiency (EE) projects under the 2022 SIPP

At the minimum, all EE projects must comply with the following applicable Department of Energy (DOE) Department Circulars to qualify for registration:

- Department Circular No. DC 2021-05-0011
- Department Circular No. DC 2022-03-0004
- Department Circular No. DC 2022-03-0005

Application for registration must be accompanied by a DOE endorsement.
The following are the additional requirements for EE projects:

- **Energy Efficiency Strategic Investment (ESSI) project/s using Electric Vehicles (EV)** must comply with national standards, when available and as appropriate as well as the regulations issued by the relevant agency/ies.

- **Alternative Fuel Vehicles (AFVs)** that run on hydrogen fuel cell, natural gas, and auto-liquefied petroleum gas (LPG) may also be deployed for corporate re-fleeting, operation of shuttles services, Public Utility Vehicles (PUVs), and Transport Network Vehicle Service (TNVS), provided that the said AFVs are made by original equipment manufacturers (OEM) and are techno-economically and economically viable.

- **Simple/Complex EE Projects** must provide to BOI certain details of the Energy Service Company (ESCO) or Third-Party Project Developer (PPD) contract with the owner of the plant, facility, or establishment.

An ESCO or TPPD shall notify the Board of the termination or pre-termination of the said contract, which shall cause the cancellation of its registration with the Board.

- **Availment of Income Tax Holiday (ITH)** incentive for **simple/complex EE Projects** shall be as follows:

    1. For ESCO and TPPD, the income eligible for ITH is the income directly attributable to the revenue generated from the registered project.

- **Availment of ITH incentive for EESI Projects** shall be as follows, subject to the evaluation by the DOE of commercialization and operationalization of the business model, among others:

    1. For ESCO and TPPD, the income eligible for ITH shall be limited to the income directly attributable to the revenue generated from the registered project.

    2. For Self-financed, ITH will be applicable to the revenue stream where the EE project will be applied.

EE projects that will not meet the minimum qualifications under these Guidelines shall be subject to the cancellation procedure.

This Circular shall take effect immediately following its publication in a newspaper of general circulation.

(Editor's note: This was published in The Philippine Star *on 11 August 2022)*

SEC Filing, Payments and Other Deadlines

Rules on Qualified and/or Eligible Personal Equity and Retirement Account (PERA) Investment Products

SEC Memorandum Circular no. 07 prescribes the rules for the qualification and/or eligibility of PERA investment products falling under the purview of the SEC.

SEC Memorandum Circular no. 07 dated 11 August 2022

Pursuant to RA No. 9505 also known as the PERA Act of 2008 and its Implementing Rules and Regulations, the SEC prescribes the rules for the qualification and/or eligibility of PERA investment products falling under the purview of the SEC.

Section 1. Applicability

These rules are being issued in accordance with Section 15 of RA No. 9505 and its Rules and Regulations, and shall cover the list of securities that the SEC considered as qualified and/or eligible as PERA Investment Products (SEC-eligible PERA Investment Products).

Section 2. List of PERA Qualified and/or Eligible Investment Products

- The following securities that are registered pursuant to the requirements of the Securities Regulation Code and Investment Company Act are deemed to be eligible PERA investment products.

    1. A newly formed mutual fund including any sub-fund of an umbrella fund and Exchange Traded Funds subject to the following requirements:

        - The Fund Manager should have a track record that for the past five years prior to its application that it has been responsible for the operation and management of a registered mutual fund which has been offered to the general public; and

        - The name shall contain the words "Personal Equity and Retirement Account" or "PERA."

        In the case of a newly formed mutual fund including any sub-fund of an umbrella fund and Exchange Traded Funds, the existing approval process for investment companies shall be observed in the qualification or accreditation as PERA Investment Product subject to the requirements mentioned above.

    2. REIT shares

    3. Corporate Bonds with an investible rating issued by an accredited Credit Rating Agency

    4. Equity Securities which form part of the PSE Dividends Yield Index

- The following exempt securities are also considered as eligible PERA Investment Products:

    1. Government Securities

    2. Securities issued by the BSP

    3. Corporate Bonds issued by banks in compliance with the requirements of the BSP

Section 3. Equity Securities which form part of the PSE Index

Equity Securities that form part of the PSE Index may be qualified as eligible PERA Investment Products provided the PSE submits to the Commission a certification that the said equity securities meet the PERA requisites of being non-speculative, readily marketable, and with a track record of regular income payment to investors, as defined under these rules.

The PSE shall submit the necessary certification to the Commission including any amendment/s thereto. The Commission shall disseminate the PSE-certified list of PERA eligible securities comprising the PSE Index by posting it on the SEC website. The Commission may also cause the posting of this list on the PSE and other websites.

Section 4. Other Securities that may be qualified as eligible PERA Investment Products

The SEC may qualify other securities to be eligible as PERA Investment products provided that, the product is demonstrated to be non-speculative, readily marketable, and with a track record of regular income payment to investors.

For purposes of Sections 2 and 3, the abovementioned criteria shall be defined as follows:

- Non-speculative

    1. An investment in shares of stock is considered to be non-speculative if the issuer of said shares has shown a history of positive income for at least three of its last five fiscal years and currently, the issuer is not in a deficit.

    2. An investment in debt securities is considered to be non-speculative if the issuer or the issue has been given an investment grade of at least a Bb rating by a Credit Rating Agency accredited by the SEC or allowed by another acceptable regulatory authority under applicable rules.

- Readily Marketable

    1. A security shall be considered as readily marketable if said security is traded in a registered security exchange.

    2. A security shall be considered as readily marketable if said security is traded in an organized market authorized or recognized by the SEC.

    3. A security shall be considered as readily marketable if said security can be redeemed anytime at the option of the investors.

- Track record of regular income payment

    1. A company is considered to have a track record of regular income payment if the security issued is an interest-bearing debt security.

    2. A company is considered to have a track record of regular income payment if the said company has adopted a specific dividend policy.

    3. A company is considered to have a track record of regular income payment if the said company, even in the absence of a specific dividend policy, is able to show a history of dividend payment for at least three of the last five fiscal years.

Section 5. Losing Eligibility as a PERA Investment Product

- A security loses its eligibility as a PERA investment product when it is declared as ineligible by the SEC.

- A registered equity security may lose its eligibility under the following circumstances:

    1. The Registration Statement pertinent to the security is suspended or revoked.

    2. In the case of a corporate bond, it is declared to be in default by a competent authority or person in accordance with applicable laws, rules and contracts.

    3. In the case of a corporate bond, its credit rating is downgraded to a non-investible grade.

    4. In the case of a PSEi member security, it is removed from the PSEi.

- A corporate bond issued by banks shall lose its eligibility in case:

    1. It is declared to be in default by a competent authority or person in accordance with the applicable laws, rules or contracts.

    2. Its credit rating is downgraded to a non-investible grade.

        - A security identified under Section 3 of these rules shall lose its eligibility after it has been found to have lost one or all of the required characteristics to be eligible as PERA investment Products, such as being non-speculative, readily marketable and a provider of regular income payments.

        - An investment in a security that is later declared to be ineligible as a PERA Investment Product shall continue to be authorized to be part of the PERA portfolio, provided that, any subsequent investments by a contributor in said security after being declared as ineligible, shall not qualify to be made part of the PERA portfolio.

Section 6. Reportorial Requirements

The issuers of securities that have been qualified by the SEC to be eligible as PERA Investment Products shall comply with any reports and other information that the SEC may prescribe and/or require.

Section 7. Applicability of the Provisions of PERA and Other Laws Implemented by the SEC

The pertinent provisions of the following laws shall apply to an eligible PERA Investment Product qualified under these Rules:

- RA No. 9505, also known as the Personal Equity Retirement Account (PERA) Act of 2008 and its Implementing Rules and Regulations and other issuances.

- RA No. 8799, also known as the Securities Regulation Code and its implementing Rules and Regulations and other issuances.

- RA No. 2629, also known as the Investment Company Act and its implementing Rules and Regulations and other issuances.

Section 8. Penalty

If, after due notice and hearing, the SEC finds that there is a violation of these Rules and the laws, rules, regulations and other issuances identified in Section 6, it shall, at its discretion, impose any of the sanctions available and applicable under these Rules and the other applicable laws, rules, regulations and other issuances without prejudice to applying *PERA Rule 18—Penalty* and other civil and criminal liabilities provided for under the applicable laws for the same act or omission.

(Editor's note: This Circular was published in Philippine Daily Inquirer *and* Manila Standard *on 29 August 2022)*

SEC Notice informs the public on the requirement to submit the MDF through email.

SEC Notice dated 2 September 2022

The Commission is notifying all Non-Stock Corporations to submit the MDF pursuant to Memorandum Circular No. 25, series of 2019 to implement an electronic filing and monitoring system.

The physical submission of the hard copy of the MDF shall no longer be required, effective immediately. Starting 1 September 2022, only scanned copies in PDF format of the printed and notarized MDF sent through email will be accepted.

SEC OGC Opinion no. 22-11 states a branch office has the power to enter into transactions that may be deemed reasonably incidental to its business purposes.

SEC OGC Opinion no. 22-11 dated 19 August 2022

Facts:

M Company, a Singaporean company, serves as a regional office of M Group in Asia-Pacific region. Under Singaporean laws, M Company is allowed to lend money to corporations and exempt from getting any license to lend money as long it does not lend to individuals.

M Company established a branch office in the Philippine. M Company intends its branch office, M Manila Branch, to lend money to any member of M Group in the Philippines.

Issue:

Can M Manila Branch lend money to companies within the M Group in the Philippines without amending the branch's SEC license?

Ruling:

Yes, M Manila Branch may lend a part of its corporate funds to members of M Group without amending its license since the said act is fairly incidental to the express powers granted to the branch under its License to Transact Business. The management of a corporation, in the absence of express restrictions, has the discretionary authority to enter into contracts and transactions which may be deemed reasonably incidental to its business purposes.

However, the lending activity to be undertaken by the Branch should be strictly limited to the members of M Group and should not be pursued as a regular and separate business activity. It should be resorted to only when need arises and should only be done for the purpose of serving corporate ends.

The test to determine whether a corporate act is in accordance with its purposes is a question of logical relation of the act to the corporate purposes in the charter, i.e., whether the act in question is in direct and immediate furtherance of the corporation's business, fairly incidental to the express powers and reasonably necessary to their exercise. The following requisites must concur: (a) the act is one which is lawful in itself, and not otherwise prohibited; (b) the act is done for the purpose of serving corporate ends; and (c) the act is reasonably tributary to the promotion of those ends, in a substantial, and not in a remote and fanciful sense.

SEC Memorandum Circular No. 08 promulgates the rules and regulations on the arbitration of intra-corporate disputes for corporations to implement Sec. 181 of the Revised Corporation Code.

SEC Memorandum Circular No. 08 dated 19 September 2022

Salient provisions of the Memorandum:

- The rules shall apply to appointments made by the Securities and Exchange Commission (SEC) to resolve intra-corporate disputes of domestic corporations and not to apply if the arbitration agreement expressly states a place of arbitration other than the Philippines.

- An intra-corporate dispute shall not be referred to arbitration when it involves criminal offenses and interests of third parties.

- An Arbitration Agreement may be included in the articles of incorporation or by-laws of a domestic corporation or may also be stipulated in the form of a separate agreement. When in place, disputes between the corporation, its stockholders or members, which arise from the implementation of the articles of incorporation or by-laws, or from intra-corporate relations, shall be referred to arbitration after compliance with any agreed pre-arbitration alternative forms of dispute resolution, such as negotiation or mediation.

- Despite not being signatories to the Articles of Incorporation, By-Laws or the Arbitration Agreement, the Arbitration Agreement shall be binding on the corporation, its directors, trustees, officers, and executives or managers.

- All Arbitration Agreements shall contain the following:

    1. The number of arbitrators (e.g., one or three);

    2. The designated independent third party who shall appoint the arbitrator or arbitrators;

    3. The procedure for the appointment of the arbitrator or arbitrators; and

    4. The period within which the arbitrator or arbitrators should be appointed by the designated independent third party.

    Arbitration Agreements that do not meet the foregoing minimum provisions shall be unenforceable, but the arbitration shall still proceed under the Alternative Dispute Resolution Act and its implementing rules and regulations if the place of arbitration is the Philippines, or under the relevant arbitration law if the seat or place of arbitration is outside the Philippines.

- Unless the Arbitration Agreement states otherwise, the seat or place of arbitration shall be presumed to be the Philippines unless the arbitral tribunal subsequently decides otherwise.

- The power to appoint the arbitrator or arbitrators forming the arbitral tribunal shall be granted to a designated independent third party and in accordance with the procedure agreed upon in the Arbitration Agreement.

- The arbitral tribunal shall have the power to grant interim measures necessary to ensure enforcement of the award, prevent a miscarriage of justice, or otherwise protect the rights of the parties. Such interim measures may include the following:

    1. Preliminary injunction directed against a party to arbitration;

    2. Preliminary attachment against property or garnishment of funds in the custody of a bank or a third person;

    3. Appointment of a receiver;

    4. Detention, preservation, delivery or inspection of property; or

    5. Appointment of a management committee.

- Final arbitral award shall be considered as a commercial arbitration award and shall be executed in accordance with the rules of procedure promulgated by the Supreme Court to implement Section 181 of the Revised Corporation Code.

- The Arbitral Tribunal shall consist of such number of arbitrators as has been agreed upon by the parties in the Arbitration Agreement. The arbitrators shall be appointed by a designated independent third party pursuant to the parties' agreed procedure. The parties are deemed to have agreed on an appointment procedure if (a) the Arbitration Agreement provides for the application of a set of arbitration rules that include an appointment procedure and a designated appointing authority; or (b) the Arbitration Agreement expressly provides an appointment procedure, which requires the parties' designated independent third party to appoint an arbitrator or arbitrators. The SEC shall appoint the arbitrators in case of failure of parties to appoint, considering, among others, the nature of the dispute; identity and nationality of the parties; and any suggestions made by the parties.

- Each prospective arbitrator shall accept his/her potential appointment in writing and sent to the Commission. By accepting the appointment, the arbitrator shall make sufficient time available to enable the arbitration to be conducted and completed expeditiously; and shall perform his or her functions with impartiality and independence.

- Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence and the Memorandum Circular provides the procedure for the challenge, release and replacement of the arbitrator.

SEC OGC Opinion no. 22-12 dated 27 September 2022

SEC OGC Opinion no. 22-12 states a company is allowed to issue shares at a premium and its paid-up capital may exceed its Authorized Capital Stock.

Facts:

Mr. S, an Indonesian national, invested Php 3.75 million in F Co. Upon validation by the Board of Investments of this investment relative to his application for an Indefinite Special Investor's Resident Visa, the BOI found that F Co. has a paid-up capital of Php 13.25 million, which is more than its Authorized Capital Stock (ACS) of Php 10 million.

Issues:

1) Whether F Co. may be allowed to issue shares of stocks at a premium.

2) Whether F Co. is allowed to have a paid-up capital which is more than its ACS.

Rulings:

1) Yes, a company may be allowed to issue shares of stock at a premium.

   A corporation's subscribed capital can be more than the par value of the shares. A company may issue shares at a premium and for the subscribers of a corporation to pay more than the par value of the shares they subscribed.

2) Yes, a company is allowed to have a paid-up capital which is more than its ACS.

   Paid-up capital is the portion of the ACS which is actually subscribed and paid by the corporation's stockholders while paid-in capital is the sum of the amount paid for shares of stocks issued, plus the additional paid-in capital (APIC), or the excess or premium paid over the par value of such shares. On the other hand, the ACS is the amount fixed in the articles to be subscribed and paid by the stockholders of the corporation or the minimum amount of capital which the corporation will receive when it issues all its shares.

   Paid-up capital was loosely used in the queries so as to cover any amount paid for the issuance of shares, including the excess or premium paid over the par value of shares. Therefore, the "paid-up capital" of the corporation would possibly exceed the ACS fixed in the articles, especially if the capital stock is fully subscribed.

SEC OGC Opinion no. 22-13 dated 30 September 2022

SEC OGC Opinion no. 22-13 states the nullification of APIC and its subsequent conversion into subscribed capital will violate the Trust Fund Doctrine. A reverse stock split will not create APIC subject to DST.

Facts:

CV Co., a domestic corporation, suffered recurring losses and incurred a cumulative deficit of Php 220 million from 1999 to 2001. To support its operations, its parent company CV Holdings made advances amounting to Php 236 million.

In May 2002, the SEC approved an increase of CV Co.'s ACS from 100,000 shares to 2.5 million shares at par value of Php 100 each. Subsequently, CV Holdings converted the Php 236 million advances to equity.

In 2007, CV Holdings made additional advances amounting to Php149.6 million since CV Co. continued to suffer losses and it incurred an annual deficit of Php 421 million. The SEC then approved its application for equity restructuring and creation of APIC to partially wipe out the existing deficit. This approval resulted in the conversion of the Php 149.6 million advances to APIC.

CV Holdings expressed its intent to recover the Php 149.6 million advances that was converted to APIC.

Issues:

1) Whether the nullification of APIC and its subsequent conversion into subscribed capital will violate the Trust Fund Doctrine.

2) Whether CV Co. is permitted to execute a reverse stock split to cover the deficit in the amount of subscribed capital following the increase in par value.

3) Whether the ACS increase as a result of the reverse stock split would be considered "original issuance" of stocks and thus subject to Documentary Stamp Taxes.

Rulings:

1) Yes, the nullification of APIC and its subsequent conversion into subscribed capital will violate the Trust Fund Doctrine.

   The Trust Fund doctrine provides that the assets and the subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims. This doctrine is not limited to reaching the unpaid subscriptions but it also encompasses the capital stock and other property and assets generally regarded as equity.

   APIC, as a premium, forms part of the capital of a corporation and therefore falls within the purview of the Trust Fund Doctrine since the price of share capital is recorded at the amount that a corporation receives in consideration for the issuance of shares, plus share premium or APIC, if any.

   Therefore, a corporation may not nullify its APIC and subsequently convert it into subscribed capital, as the same violates the Trust Fund Doctrine. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholders. The creditors should have the first claim on the trust fund and the stockholders have no rights to it, until all the creditors are satisfied.

2) A reverse stock split will not create an APIC because the amount of the subscribed and paid-up capital will remain the same and therefore, undergoing a reverse stock split will not result in a decrease of deficit.

   In a reverse stock split, the corporation's capital structure is readjusted, and the outstanding shares are merely transformed into a smaller number of outstanding shares. Therefore, in the absence of some feature not associated with the typical stock split, the receipt of the shares as a result of the split does not result in taxable income to either the stockholder or the corporation.

3) A reverse stock split will not result in an increase in the ACS, thus, no documentary stamp taxes will be due.

   There will be no changes in the balance of the share capital/capital stock after a reverse stock split. There is neither an increase nor decrease in capital as a reverse stock split merely increases the par value and decreases the number of shares proportionately.

SEC OGC Opinion no. 22-14 dated 7 October 2022

SEC OGC Opinion no. 22-14 states a non-stock, non-profit corporation may not be converted into a stock corporation without liquidating its assets.

Facts:

Capt. H represents a non-stock, non-profit educational corporation operating for 30 years, specializing in the training of maritime professionals. The corporation intends to convert into a stock corporation.

Issues:

1) Whether a non-stock, non-profit corporation may be converted into a stock corporation without liquidating its assets and an undertaking of accountability for obligations is sufficient.

2) Whether a non-stock, non-profit corporation may be converted into a stock corporation after it liquidates its assets.

Ruling:

1) No, a non-stock, non-profit corporation may NOT be converted into a stock corporation without liquidating its assets. An undertaking in the Corporate By-laws indicating that the corporation is accountable for the obligations acquired while it was still a non-stock corporation is insufficient.

   Section 87 of the RCC defines a nonstock corporation as an entity where no part of its income is distributable as dividends to its members, trustees, or officers. Thus, the members of such corporations are not entitled to any profit or interest in the corporate assets that may be obtained out of the corporation's operations.

   The non-stock, non-profit corporation only holds its funds in trust for carrying out the objectives expressed in the corporation's charter.

   The conversion of the non-stock, non-profit corporation into a stock corporation by mere amendment of the articles of incorporation or by-laws would be tantamount to distribution of the corporate assets or income to its members, which might defraud the public who may have contributed donations, gifts, or grants to the corporation.

2) Yes, the former members of the non-stock education corporation may incorporate and organize the educational institution as a stock corporation after liquidating its assets.

   Before the non-stock, non-profit corporation may be converted into a stock corporation, the former must first be dissolved so that the corporate assets will be liquidated in accordance with the distribution procedure for non-stock corporations. Thereafter, the members thereof may organize a stock corporation directed to bring profits to themselves.

Court of Tax Appeals

Tax Refund/Issuance of Tax Credit

Philex Mining Corporation vs. Commissioner of Internal Revenue
CTA EB No. 2497 (CTA Case No. 10037) promulgated 29 September 2022

Facts:

On 28 October 2018, Company A filed with the BIR VAT Credit Audit Division (VCAD) an administrative claim for refund of input VAT amounting to Php 68,882,568.83 for CY 2017.

Subsequently, on 31 January 2019, Company A received the VAT Refund Notice dated 16 January 2019 from the BIR, partially granting its request for refund of excess and unutilized input VAT for the four quarters of CY 2017 in the amount of Php 46,729,507.99

On 28 February 2019, Company A filed a Petition for Review with the CTA. On 5 January 2021, the Court in Division denied Company A's Petition for Review for lack of merit.

A VAT invoice is required only for domestic purchase of goods and properties, while an import entry or other equivalent document showing actual payment of VAT on the imported goods is required for importation of goods.

In order to be entitled to input tax credits, importation of goods must be supported by IEIRDs or SADs and SSDTs, while domestic purchases of goods must be supported by VAT invoices showing the information required under Sections 113 and 237 of the NIRC of 1997, as amended.

On 21 January 2021, Company A filed for a Motion for Reconsideration which was likewise denied by the Court in Division. Subsequently, on 22 July 2021, Company A filed a Petition for Review with the CTA *en banc*.

Company A argues that neither the law nor regulations require the presentation of invoices in order to substantiate the input VAT on imported goods. Company A also asserts that for importation of goods, Section 4.110-8 of RR No. 16-2005 provides that it is sufficient for the taxpayer to present either its (1) Import Entry and Internal Revenue Declaration (IEIRD), or (2) other equivalent document showing actual payment of VAT on the imported goods. Company A claims that SSDTs and SADs are sufficient to prove Company A's payment of VAT on importations.

Issues:

1. Whether the invoicing requirements stated under Sections 110 and 113 of the NIRC of 1997, as amended, apply to imported goods.

2. Whether the SSDTs and SADs are sufficient to prove payment of input VAT on Company A's importations.

Ruling:

1. No.

   As can be gleaned from Sections 110 and 113 of the NIRC of 1997, as amended, it is the VAT-registered person who is required to issue a VAT invoice for every sale, barter or exchange of goods or properties. Corollary thereto, the invoicing requirements under Sections 110 and 113 of the National Internal Revenue Code (Tax Code or NIRC) of 1997, as amended, are not applicable to imported goods sold by foreign sellers. Foreign sellers, which in this case are the sellers of the capital goods exceeding Php 1,000,000.00 which were acquired by the purchaser through importation, and the sellers of the imported goods other than capital goods, are not bound to comply with the VAT invoicing requirements under Section 113 of the NIRC of 1997, as amended, because they are not subject to Philippine tax laws. As the foreign sellers of the imported goods are not registered with the BIR and are not VAT-registered, they cannot be expected to issue VAT invoices.

   In fact, in Section 4.110-8 (a) of RR No. 16-2005, the BIR made a distinction between the substantiation requirements of input tax credits for importation of goods and domestic purchase of goods and properties. A VAT invoice is required only for domestic purchase of goods and properties, while an import entry or other equivalent document showing actual payment of VAT on the imported goods is required for importation of goods.

2. Yes.

   Under Section 4.110-8 (a) (1) of RR No. 16-2005, input taxes for the importation of goods must be substantiated by the import entry or other equivalent document showing actual payment of VAT on the imported goods. Under II (3) of RMC No. 047-19, claims for refund of unutilized input VAT on importation may be supported by the IEIRD and/or the SSDT and SAD. Likewise, under III (A) (3) of CMO No. 028-14, SSDTs and SADs are sufficient proof of payment of input VAT on importations. Under Section 2 (a) of CMO No. 29-15, the use of the IEIRD is discontinued and is replaced by the SAD. Hence, it is evident that SSDTs and SADs are sufficient to prove actual payment of VAT on the imported goods.

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