

Tax Bulletin

February 2022

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BIR Administrative Requirements

RR No. 1-2022 extends for 30 days the deadlines for (i) the filing of tax returns and the payment of taxes due thereon, including submission of certain documents (position papers, replies, protests, documents, etc.); (ii) the filing of application for tax refund; (iii) processing of VAT refund; and (iv) issuance of Assessment Notices and Warrants of Dstraint and Levy, falling due during the period declared as Alert Level 3 or higher.

RR No. 1-2022 dated 27 January 2022

- ▶ The deadline for the following activities falling due during the period declared as Alert Level 3 or higher by the IATF this month of January 2022 is extended for thirty (30) calendar days from due dates:
 1. Submission and/or filing of the documents and/or returns, as well as the payment of the corresponding taxes due thereon;
 2. Filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to the ongoing BIR audit investigation;
 3. Filing of application for tax refund, including VAT refund, and processing of VAT refund claim; and
 4. Issuance of service Assessment Notices, Warrants of Dstraint and/or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes.
- ▶ The extension applies to all taxpayers within the jurisdiction of the Revenue Regional and Revenue District Offices (RDO) of the BIR classified under Alert Level 3 or higher by the IATF.
- ▶ If the extended due dates fall on a holiday or non-working day, the submission and/or filing contemplated herein shall be made on the next working day.

RMC No. 13-2022 circularizes RA No. 11635 amending Section 27 (B) of the Tax Code.

RMC No. 13-2022 dated 24 January 2022

Section 27 (B) of the Tax Code is amended to read as follows:

“(B) Hospitals which are non-profit and proprietary educational institutions shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: Provided, That beginning July 1, 2020 until June 30, 2023, the tax rate herein imposed shall be one percent (1%): Provided, further, That if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term ‘unrelated trade, business or other activity’ means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution, or hospital of its primary purpose or function. ‘Proprietary educational institution’ means any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education (DepEd), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.”

RMC No. 17-2022 publishes the full text of the 3 January 2022 Letter from the DOH endorsing updates to the List of VAT-Exempt COVID-19 Medicines under RA No. 11534.

RMC No. 17-2022 dated on 31 January 2022

- ▶ Inclusion of Molnupiravir 200 mg capsule under brand name Molnarz on the list of VAT-Exempt Drugs and Vaccines prescribed and directly used for COVID-19 treatment.

RMC 19-22 provides clarification and guidance on Section 8 of RR No. 5-2021 on the tax-free exchanges of properties under Section 40(C)(2) of the Tax Code particularly on the mandate to RDO and other internal revenue officers to issue a CAR sans prior BIR Ruling.

RMC 19-2022 issued on 4 February 2022

- ▶ This Circular is issued to provide clarification and guidance to the RDO, other internal revenue officers and others concerned on Section 8 of RR No. 5-2021, particularly on the mandate to issue CAR sans a prior BIR confirmation or tax ruling on the tax-free exchanges of properties.
- ▶ Under Section 40(C)(2) of the Tax Code, reorganization and transfer to a controlled corporation are the transactions covered by the tax-free exchanges of properties.
- ▶ The transfers of properties in exchange for shares of stocks made pursuant to Section 40(C)(2) of the 1997 Tax Code, as amended, shall be exempt from the following taxes:
 1. Capital Gains Tax (CGT)
 2. Creditable Withholding Tax (CWT)
 3. Income Tax (IT)
 4. Donor's Tax (DT)
 5. Value-Added Tax (VAT)
 6. Documentary Stamp Tax (DST) on conveyances of real properties and shares of stocks
- ▶ However, the original issuance of shares in exchange for the properties transferred shall be subject to the DST under Section 174 of the 1997 Tax Code, as amended.
- ▶ For purposes of the issuance of the CAR for the transferred properties pursuant to the tax-free reorganization/exchange, the parties to the transaction shall submit the documentary requirements listed in Annex "B" of the Circular to the RDO having jurisdiction over the place where the property is located, in case of a real property, or in case of shares of stock, the RDO where the issuing corporation is registered.
- ▶ In case the transaction involves transfer of multiple real properties and/or shares of stocks situated in various locations covered by different RDOs, the CAR shall be processed with the RDO having jurisdiction over the place where the transferee corporation is registered.
- ▶ Following issuance of the corresponding CAR, the concerned RDO shall conduct a post-audit of said transactions to determine the taxability thereof.
- ▶ If after audit the transaction is found to be not entitled to the tax deferment treatment under Section 40(C)(2) of the Tax Code, the transaction shall be subject to the applicable taxes, plus interest, penalty, and surcharge. However, the result of the audit shall not invalidate the CAR previously issued for the transfer of the properties.

- ▶ The taxpayer is not precluded from requesting a ruling/legal opinion with the Law and Legislative Division (LLD) of the BIR National Office to clarify legal issue/s that may affect the transactions made pursuant to Section 40(C)(2) of the 1997 Tax Code, as amended, including the taxability of such transaction.

RMO No. 9-2022 provides the guidelines set forth by the Supreme Court in A.M. No. 20-12-01-SC to be adopted as an alternative mode to in-court proceedings, due to the health risks posed by COVID-19.

RMO No. 9-2022 dated 21 January 2022

- ▶ Policies
 1. It should be noted that in-court proceedings are still the primary mode for hearing administrative cases.
 2. Administrative due process rights of the respondent are deemed observed when his/her appearance and/or testimony are done remotely through video conferencing under the said guidelines with his/her consent.
 3. The conduct of videoconferencing shall closely resemble in-court hearings, with remote locations viewed as extensions of the courtroom for administrative cases. The dignity and solemnity required in an in-court hearing, as well as the rules and practices on proper court decorum, shall be strictly observed. Perjury laws shall apply.
 4. Confidentiality of attorney-client communications shall always be preserved. The parties to the administrative case participating in a videoconference hearing shall be provided with private means of communication whenever necessary.
 5. The 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) of the Civil Service Commission shall continue to be observed, and the Rules of Court suppletorily.
 6. Considering that the proceedings in administrative cases is classified as sensitive personal information under the Data Privacy Act of 2012, there is no public access to videoconference hearings. Only the authorized personnel shall be allowed to participate in the administrative hearing/s.
 7. The proceedings through videoconferencing shall be recorded by the host, Personnel Adjudication Division. It shall form part of the records of the case, appending thereto relevant electronic documents taken up or issued during the hearing.

RMC 10-2022 was issued to publish and disseminate the BIR's Priority Programs and Projects for CY 2022. These endeavors, together with other continuing Programs and Projects, shall be implemented in line with the BIR's ongoing Digital Transformation Program, and in support of the attainment of the revenue services CY 2022 collection target.

RMC 10-2022 issued on 31 January 2022

- ▶ *The details of the CY2022 Priority Programs and Projects can be accessed via: RMC 10-2022 Priority Programs and Projects CY2022*

Banks and Other Financial Institutions

Guidelines on the Settlement of Electronic Payments Under the National Retail Payment System (NRPS) Framework

Circular No. 1135 provides guidelines on the settlement of electronic payments under the NRPS Framework.

Circular No.1135, Series of 2022

- ▶ Amendments to Section 804/802-Q/502-S/402-P/502-N of the MORB/MORNBFI are as follows:

Definition of terms

1. *Batch clearing and settlement of electronic payments* pertains to the bulk processing, clearing and settlement of payment instructions at set intervals based on a specified cut-off time. It may be referred to as multiple batch clearing and settlement of electronic payments when more than one cycle is performed in a clearing day.
2. *Clearing participants*, as used in this Section, shall refer to direct clearing participants, as defined in Section 803/801-Q/501-S/401-P/501-N.
3. *Clearing switch operator (CSO)* provides clearing switch service, as defined in Section 803/801-Q/501-S/401-P/501-N.
4. *Electronic payment, synonymous to electronic fund transfer (EFT)*, shall refer to transfers of funds between two transaction accounts in the same or different BSFIs which are initiated and received using electronic devices and channels to transmit payment instructions, and excludes domestic remittance transactions under existing Bangko Sentral regulations, as defined in Section 803/801-Q/501-S/401-P/501-N.
5. *Instant retail payment*, otherwise known as fast payment, is defined as an electronic payment in which the transmission of the payment message and the availability of "final" funds to the payee occur in real time or near-real time on as near to a 24-hour and seven-day (24/7) basis as possible.

Minimum requirements for the operation of a settlement mechanism for electronic payments

1. A clearing participant or its settlement sponsor shall maintain with the Bangko Sentral a demand deposit account (DDA) which shall be used specifically for the settlement of the clearing participant's net clearing obligations arising from electronic payments.
2. Distinct DDAs shall be separately established and used for each of the following: (i) instant retail payments, and (ii) batch clearing and settlement of electronic payments.
3. The clearing participant or its settlement sponsor shall prefund the settlement of its net clearing obligation through the DDA stated in Item "a" above, ensuring that such account can sufficiently cover said obligation at any point during a settlement cycle. In determining the adequate amount of prefunding, the clearing participant/settlement sponsor shall consider the number of settlement cycles within a clearing day, and the length of settlement cycles such as during weekends and holidays, among others.

4. The clearing participants shall agree on thresholds which shall be the bases of the CSO in determining if the balances of the DDAs are sufficient for clearing and settlement of the participants' electronic payments in any given settlement cycle.

In the case of instant retail payments, the CSO shall execute a notification process that enables the clearing participants to efficiently monitor movements in their instant retail payment positions, and at the same time alerts them to place additional funds in their DDAs particularly when the agreed-upon threshold is breached.

As regards batch clearing and settlement of electronic payments, the CSO shall provide a system that enables clearing participants to monitor movements and place additional funds, when necessary, in their DDAs in a timely manner for each and every settlement cycle.

5. The service contract between the clearing participants and the CSO shall include, at a minimum, the following provisions.
 - ▶ For instant retail payments:
 - a. The CSO shall record the clearing participants' DDA balances obtained from the Bangko Sentral at the start of every settlement cycle and monitor the clearing participants' net clearing obligations against their respective account balances;
 - b. Should the instant retail payments position (funds in the DDA minus net clearing obligation/withdrawal from the DDA) of any of the clearing participants breach their agreed-upon thresholds, the CSO shall immediately send an electronic notification to the concerned clearing participant; and
 - c. Any instant retail payment which is not fully covered by the corresponding DDA or which will result in a negative instant retail payments position shall be rejected by the CSO. A clearing participant with an instant retail payments position of zero shall be suspended from carrying out further outgoing instant payment transactions until said participant registers a positive position on account of its incoming payment transactions and/or subsequent deposits into its DDA.
 - ▶ For batch clearing and settlement of electronic payments:
 - a. The CSO shall record the clearing participants' DDA balances obtained from the Bangko Sentral prior to the initial settlement cycle of the day;
 - b. The CSO shall allow clearing participants to effectively monitor the sufficiency of their DDA balances for every settlement cycle by providing access to timely data on the clearing participants' net clearing obligations against their respective DDA balances;

- c. Should the balance of a clearing participant's DDA be insufficient to settle its net clearing results, the participant shall ensure prompt settlement by funding its DDA with the Bangko Sentral either prior to the specified settlement cut-off time or within the agreed-upon grace period after the settlement cut-off time. If the clearing participant fails to sufficiently fund its DDA for a specific settlement cycle, the CSO shall exclude all of the said clearing participant's payment instructions from the net clearing results transmitted to the Bangko Sentral for such settlement cycle;
- d. If the CSO receives a settlement failure report from the Bangko Sentral, the CSO shall re-process the transactions and generate a revised net settlement report which excludes all payment instructions from the clearing participants with insufficient DDA balances; and
- e. Clearing participants that fail to sufficiently fund their net obligations in a timely manner shall be subject to commensurate penalties as provided under the ACH rules and regulations; and
- f. Should the clearing participants determine that the funds in their DDAs for electronic payments are excessive after taking into account their highest potential clearing obligations and agreed upon threshold, the clearing participants shall be allowed to withdraw from their DDAs to enable them to make optimal use of their funds, provided that such withdrawal will not result in a deficiency in the required reserve of the bank/QB.

The Bangko Sentral shall not be precluded from deploying applicable regulatory enforcement actions to concerned clearing participants notwithstanding the inclusion of sanctions in the ACH for non-compliance with the clearing participants' agreed-upon settlement mechanism.

Risk management

In view of the risks involved in the prescribed settlement mechanism for electronic payments, including the possibility that a rejected payment transaction of a client due to prefunding issues may give rise to serious reputational damages to the concerned clearing participant, the BSFIs participating in any ACH shall ensure that they have the necessary operational and liquidity risk management measures in place. Such measures shall be designed in accordance with the guidelines provided under Sections 146/146-Q/125-N on Operational Risk Management and 145/145-Q/144-S/124-N on Liquidity Risk Management.

Demand deposits for electronic payments as eligible reserves

The DDAs maintained with the Bangko Sentral for the settlement of net clearing obligations arising from electronic payment transactions shall form part of the banks'/QBs' reserves against deposit and deposit substitute liabilities pursuant to Section 252/212-Q on the Composition of Reserves.

Amendments to the Regulations on Confirmation of the Election/Appointment of Directors/Trustees/Officers

Circular No. 1136 amends provisions of the MORB and MONRBF1 to limit the coverage of Bangko Sentral confirmation of appointment of officers of supervised financial institutions and to streamline the documentary requirements in the confirmation of election/appointment of directors/trustees/ officers of BSFIs.

Circular No.1136, Series of 2022

Manual of Regulations for Banks

- ▶ **Section 137(a), MORB. Confirming authority.** The election/appointment of directors/officers shall be subject to confirmation by the following:

Confirming Authority	Position Level
a. Monetary Board	Directors and CEO/President or its equivalent rank of BSFIs, QBs and NBFIs with trust authority with total assets of at least Php10.0 billion; and of trust corporations with assets under management of at least Php10.0 billion.
b. Financial Supervision Sector (FSS) Committee	Directors and CEO/President or its equivalent rank BSFIs, QBs and NBFIs with trust authority with total assets of less than Php10.0 billion; and of trust corporations with assets under management of less than Php10.0 billion.
	Heads of the following operating functions: {i) Comptrollership Finance, (ii) Lending. (iii) Treasury, (iv) Branch Banking and (v) Information Technology, directly reporting to the CEO/President or its equivalent rank or to the foreign bank office, and with the rank of Senior Vice President (SVP) and above, of Ubs and KBs.
	Heads of internal audit, risk management and compliance functions, regardless of rank of banks, QBs and NBFIs with trust authority; and of trust corporations. Trust Officer, regardless of rank, of banks/ QBs/NBFIs as provided in Sec. 412 (Confirmation of the appointment/designation of trust officer and independent professional)

- ▶ The appointment of officers other than those mentioned in the table/matrix shall not be subject to Bangko Sentral confirmation.
- ▶ **Bio-data of directors and officers.** For SVP and above positions which are not subject to Bangko Sentral confirmation, the BSFI shall submit to the Bangko Sentral within twenty (20) banking days from the date of the appointment/promotion, a letter stating that fit-and-proper test has been conducted, bio-data with ID picture, and notarized authorization form per Appendix 80.

Manual of Regulations for Non-Banks Financial Institutions

▶ Bio-data of directors and officers

1. For directors and officers subject to confirmation, bio-data must be submitted upon every election/re-election/appointment/promotion in a prescribed form.

For SVP and above positions which are not subject to Bangko Sentral confirmation, a letter signed by the CEO/President or its equivalent rank stating that the institution has conducted a fit and proper test and is taking full responsibility thereon on ensuring that the officer meets the BSP eligibility requirements/qualifications, and the bio-data with ID picture, together with the duly notarized authorization form must be submitted.

The required certification and supporting documents for confirmation of directors and officers under Appendix 101 of the MORB and Appendix Q-58 of the MORNBF, as further amended by Circular 1129, s. 2021 and S-19 are further amended.

Extension of BSP Prudential Relief Measures

Memorandum No. M-2022-004

- ▶ The provisions on the use of credit risk mitigation under Appendix 59/Q-45 of the MORB/ MORNBF as well as claims with eligible collateral or guarantees under Appendix 62 of the MORB shall continue to apply.

The foregoing provisions shall apply until 31 December 2022. (*Amending Memorandum No. M-2020-034 dated 28 April 2020*)

- ▶ The reduction in the Minimum Liquidity Ratio (MLR) and the arrangements set forth in this memorandum shall be effective until 31 December 2022, unless otherwise revoked by the BSP. (*Amending Memorandum No. M-2020-085 dated 1 December 2020*)
- ▶ The additional operational relief measures that are available to BSFIs are as follows:

Increase in the single borrower's limit (SBL). Increase in the SBL under Section 362 of the MORB/Section 342-Q of the MORNBF from 25 percent to 30 percent until 31 December 2022, pursuant to national interest. (*Amending Memorandum No. M-2020-057 dated 21 July 2020 and Memorandum No. M-2021-026 dated 26 April 2021*)

- ▶ In view of the lapse of the transitory period for the Single Borrower's Limit (SBL) pursuant to Section 103 of the MORB, as amended by Circular No. 1073 dated 10 February 2020, existing foreign bank branches established in the Philippines prior to Republic Act No. 10641 that breach the SBL shall not be subject to sanctions prescribed under Section 362 of the MORB until 31 December 2022: Provided, That the amount of the new loan, credit accommodation, or guarantee extended as well as the restructured, renewed, and refinanced existing credit exposures, beginning 01 January 2021 until 31 December 2022, shall not exceed the prescribed percentage limit¹ using as reference point twice the level of capital as defined under Section 103 of the MORB (Capital requirements of foreign bank). (*Amending Memorandum No. M-2021-002 dated 4 January 2021*)

Memorandum No. M-2022-004 amends BSP regulations on the prudential relief measures for BSFIs affected by COVID-19 to sustain the momentum of bank lending and ensure continued access to financial services by the public, including vulnerable sectors of the economy.

- ▶ The Monetary Board, in its Resolution No. 743 dated 11 June 2020, approved the grant of regulatory relief for pawnshops through the relaxation of their maximum borrowing limit by increasing the allowed percentage of their total borrowings to pledge loans from 50 percent to 70 percent until 31 December 2022. (*Amending Memorandum No. M-2020-050*)

Extension of BSP Operational Relief Measures

Memorandum No. M-2022-005 extends the BSP operational relief measures to ensure continued delivery of financial services of BSFIs while at the same time ensure health and well-being of BSFI employees and clients amid the continuing COVID-19 pandemic.

Memorandum No. M-2022-005

- ▶ **Relaxation of the Notification Requirements on Changes in Banking Days and Hours as well as Temporary Closure of Bank Branches/Branch-Lite Units and BSFI Offices/Service Units.**
 1. A bank need not inform the BSP of changes in its banking days, in the case of temporary closure of the bank, and changes in its banking hours, as required under Section 108 of the MORB until 31 December 2022.
 2. The temporary closure of a bank head office/branch/branch-lite unit or NSSLA head office/service unit from 01 January 2022 to 31 December 2022 shall not be subject to the notification requirements under Section 105 of the MORB/Subsection 4151S.8 of the MORNBF: Provided, That information on the closure shall be posted on the bank's/NSSLA's website or social media accounts or displayed in conspicuous places in the premises of the affected bank branch/branch-lite or NSSLA service unit, if the latter requirement is practicable.
 3. The temporary closure of other BSFI head office/offices/units from 01 January 2022 to 31 December 2022 shall be subject to the posting of information on the closure on the BSFI's website/social media account or in conspicuous places in the premises of the affected BSFI head office/office/unit, if the latter requirement is practicable.
 4. A BSFI shall submit a consolidated report on the bank head office/branches/branch-lite-units or BSFI head office/offices/service units that were temporarily closed to the appropriate supervising department of the BSP in accordance with the following submission timelines:
 - ▶ Temporary closures from 01 April 2021 to 31 December 2021 - on or before 30 June 2022, and
 - ▶ Temporary closures from 01 January 2022 to 31 December 2022 - on or before 31 March 2023.
 5. The BSFI shall periodically update the appropriate supervising department of the BSP on the status of the re-opening of said bank head office/branches/branch-lite units or BSFI head office/offices/service units until such time that these units are fully operational.

▶ **Relief Measure on Customer Identification**

1. Any requirement for the presentation of valid ID shall be relaxed, including for electronic or online customer onboarding and transactions, subject to the following conditions:
 - a. xxx
 - b. The customer is either a permanent or temporary resident or who conducts business in the area which has been declared to be under community quarantine by the competent authority.
 - c. xxx
2. Shall be effective until 31 December 2022. The period of applicability may be extended depending on the developments of the COVID-19 situation.

▶ **Waiver of BSP approval on Requests for Extension of the deadline to open approved bank branches/BLUs under Section 105 of the Manual of Regulations for Banks is extended until 31 December 2022.**

1. To avail of the said relief, the bank must notify its supervising department of the deferment of the opening of its approved but not yet opened branches/BLUs, provided that the deferment shall not exceed 3 years from the date of BSP approval of the establishment of subject branch/BLU.

▶ **Extension of the Period of Compliance with BSP supervisor requirements.**

1. BSFIs shall be given until 30 June 2022 within which to comply with supervisory or notification requirements which fall due within the months of January to March 2022.
2. BSFIs shall be given until end-June 2022 to submit the documentary requirements related to activities under a Type C license that fall due within the months of January to March 2022.

Operational Relief on the Submission of Prudential Reports to the BSP-Financial Supervision Sector

Memorandum No. M-2022-006

▶ **Level Transactional Reports**

1. The identified Level 1 and Transactional Reports (Annex A) shall continue to be submitted to the BSP-FSS in accordance with the timelines prescribed under existing regulations.

▶ **Other Reports**

1. The submission of the remaining Level 1, Level 2 and Transactional Reports (Annex B) that fall due from the months of January to March 2022 shall be suspended by 1 quarter.
2. Regular submission of the Level 1, Level 2 and Transactional Reports that were deferred shall resume for reports that fall due starting from the month of April 2022, in accordance with the timelines prescribed under existing regulations.

Memorandum No. M-2022-006 provides the guidelines governing the submission of prudential reports by BSFIs to the BSP-FSS in view of the COVID-19 situation in the country.

3. The submission of the Level 1, Level 2 and Transactional Reports that fall due from January to March 2022 and were deferred shall resume starting April 2022. Level 1 Reports whose submission were deferred in the first quarter of 2022 shall be submitted together with the reports due for submission in April 2022, following the prescribed deadlines under existing regulations.
4. Meanwhile, Level 2 and Transactional Reports that fall due from January to March 2022 and were deferred shall be submitted at any time on or before 30 April 2022, except for the Demand Deposit Account (DDA) Reconciliation Statement which shall be submitted on or before 28 February 2022.
5. In lieu of the submission of the Report on Basic Security Deposit Transactions during the months of January to March 2022, Trust Entities and Personal Equity and Retirement Account (PERA) Administrators, shall submit a notification of the intended deposit, withdrawal, replacement, or redemption of securities at least 2 banking/business days prior to date of securities transfer to BSD-Transactional@bsp.gov.ph, tamsd@bsp.gov.ph, and to the Group Head and Division Head of the appropriate supervising department.

The format for the subject line shall be:

"BSD-Transactional <Full Name of Trust Entity/PERA Administrator>, yyyymmdd".

6. In the case of Level 2 Reports or Transactional Reports that cover several reporting periods, the BSFI may consolidate such reports into a single submission. The submitted reports will be counted as 1 report for purposes of determining compliance with submission deadlines.

► Other Guidelines

1. A BSFI that does not have any transactions or exposures to report will submit a Certification signed by the BSFI's President/Chief Executive Officer or his/her designated officer stating that the BSFI has no relevant transactions/exposures to report, together with a list of affected Level 2 and Transactional Reports falling due within the months of January to March 2022. The Certification and list will be submitted to the appropriate supervising department of the FSS on or before 30 April 2022.
2. The BSP-FSS may require a BSFI to submit a report earlier than the extended submission deadlines, if warranted. The BSFI shall be given a reasonable period to submit the same to the appropriate supervising department of the BSP.
3. Reports of BSFIs shall continue to be submitted electronically, in line with existing guidelines on the submission of reports under Memorandum No. M-2021-0036 dated 28 June 2021.
4. The notarization requirement for certifications shall continue to be waived.

Memorandum No. M-2022-007 answers the frequently asked questions on Targeted Financial Sanctions.

Frequently Asked Questions on Targeted Financial Sanctions

Memorandum No. M-2022-007

► Overview on Targeted Financial Sanctions (TFS)

1. What are TFS?

TFS means both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities, for terrorism, terrorist financing (TF), proliferation of weapons of mass destruction (WMD), and proliferation financing (PF).

2. What is the purpose of such sanctions?

Financial sanctions are generally imposed to:

- Coerce a regime, or individuals within a regime, into changing their behavior (or aspects of it) by increasing the cost on them to such an extent that they decide to cease the offending behavior;
- Constrain a target by denying them access to key resources needed to continue their offending behavior, including the financing of terrorism or nuclear proliferation;
- Signal disapproval, stigmatizing and potentially isolating a regime or individual, or as a way of sending broader political messages nationally or internationally; and/or
- Protect the value of assets that have been misappropriated from a country until these assets can be repatriated.

3. Why is TFS relevant to BSFIs?

BSFIs, which are covered persons under the Anti-Money Laundering Act, as amended (AMLA), are required by applicable laws and regulations to implement TFS and to comply with the financial sanctions (such as targeted asset freeze and prohibition against dealing) imposed on designated individuals and entities. TFS are important means to deprive financiers of terrorism and proliferation of WMD of their funds or access to financial services, thereby protecting people from the threat of terrorism and WMD, among others.

4. What are the pertinent laws, regulations and related guidance issued by competent authorities in the Philippines on TFS?

Legal frameworks:

- RA No. 11521 amending the AMLA;
- RA No. 11479 or The Anti-Terrorism Act of 2020 (ATA);
- RA No. 10168 or The Terrorism Financing Prevention and Suppression Act of 2012 (TFPSA)

Administrative rules issued by the Anti-Money Laundering Council (AMLC) and the BSP, include the following:

- ▶ AMLC Regulatory Issuance No. 05 dated 28 July 2021 on Guidelines for De-Listing and Unfreezing Procedures;
- ▶ AMLC 2021 Sanctions Guidelines on TFS related to terrorism, TF and PF issued on 3 March 2021;
- ▶ AMLC Regulatory Issuance No. 02 dated 31 January 2021 on Amendments to Certain Provisions of AMLC Regulatory Issuance No. 4, Series of 2020
- ▶ AMLC Regulatory Issuance A, B, and C No. 1 dated 30 January 2021 on Amendments to Certain Provisions of the 2018 Implementing Rules and Regulations (IRR) of Republic Act No. 9160, as amended
- ▶ AMLC Regulatory Issuance (ARI) No. 4 dated 28 May 2020 on Freeze Order for Potential Target Matches under the United Nations Security Council (UNSC) Consolidated Lists (Targeted Financial Sanctions);
- ▶ 2021 AMLC Registration and Reporting Guidelines dated 23 June 2021 (Part 1, Section IV [Suspicious Transaction Reports], D, No. 2 [d]); and
- ▶ Sections 921/921-Q (Customer Due Diligence) and 923/923-Q (Additional Preventive Measures for Specific Customers and Activities) of the BSP Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI)

The aforementioned laws and rules, as well as subsequent TFS-related issuances can be downloaded from the websites of the AMLC (amlc.gov.ph) and the BSP (bsp.gov.ph). The AMLC Resolutions related to terrorism financing are found in the AMLC website.

▶ **TFS Risk Assessment and Mitigation Measures**

1. What is TFS risk assessment?

TFS risk assessment pertains to the identification and evaluation of sanctions risk or risks of potential breach, non-compliance/non-implementation or evasion of TFS obligations (e.g., designated individuals and entities were able to access financial services due to weak customer onboarding procedures, lack of staff training, etc.), and taking appropriate mitigating measures commensurate with the level of identified risks.

▶ **Screening Tools and Systems**

1. What are the mandatory lists to be included in the sanctions database/database of designated persons and entities?

At a minimum, the sanctions database should include the following and their successor resolutions:

- ▶ UNSC Consolidated List that includes UNSC Resolutions 1267/1989 (Al Qaeda), 1988 (Taliban) and 2253 (ISIL Daesh) for TFS on terrorism and terrorist financing;

- ▶ UNSC Consolidated List that includes UNSC Resolution Numbers 1718 of 2006 (DPRK) and 2231 of 2015 (Iran) for TFS on PF;
- ▶ Domestic designations (or those that are designated by the AntiTerrorism Council [ATC] pursuant to UNSC Resolution 1373, Section 25 of the ATA, Rule 15.b of the IRR of the TFPSA) and those proscribed by the Court of Appeals under Section 26 of the ATA.

The UNSC Consolidated List and the updates thereto may be downloaded from the UNSC website (<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>) or from the AMLC website.

▶ **Disposition of Matches**

1. What is the difference between name match, potential target match and target match?

- ▶ Name Match - refers to an individual, person or an entity whose name matches with a name in the Sanctions Database/UNSC Consolidated List.
- ▶ Potential Target Match - refers to an individual or entity whose identity matches most, but not all, of the identifier information provided in the Sanctions Database/UNSC Consolidated List. It is a close name match for a person whose identifier information matches most of those either in the UNSC Consolidated List, ATC designated list or proscribed by the Court of Appeals, subject to a TF or PF asset freeze.
- ▶ Target Match - refers to an individual or entity whose identity matches all the identifier information and is identified to be the designated person in the Sanctions Database/UNSC Consolidated List.

2. What can BSFIs do to disambiguate or resolve name match?

SFIs may match other relevant customer identifier information (e.g., alternate names and spelling, date and place of birth, address, nationality, identification or passport numbers¹⁹), or inquire or request additional information and identification documents from the customer or other reliable parties/relevant government agencies, such as the AMLC²⁰, to verify whether the name match is a potential target match or target match.

▶ **Filing of STRs**

1. What would warrant filing of an STR against an immediate family of a person in the designated list?

The BSFI should file an STR on the designated person's immediate family if it meets the definition of ST under the law. For example, if the immediate family's account, fund and source originated from and/or are materially linked to the monetary instruments or properties subject of the freeze order.

▶ **Delisting**

1. Upon publication of list of delisted persons, should BSFIs lift the effects of the freeze order on the account even without confirmation from the AMLC?

If the institution receives information that its customer subject of freeze order is included in the list of delisted persons, the requirement is to lift the freeze and ensure that assets are unfrozen expeditiously. Upon receipt of an unfreezing order from the AMLC or upon knowledge of a delisting made by relevant UNSC or its Committee, the BSFI holding frozen funds and other assets shall implement the unfreezing order or unfreeze, respectively, without delay and submit a detailed report to the AMLC. The detailed report shall be filed within 24 hours from the lifting of the freeze order and include the time and date of unfreezing and a list of the unfrozen funds and other assets.

▶ **Others**

1. In case a person's assets/funds were mistakenly frozen, what recourse is available to the person? Is there a liability on the part of the FI?

Any person who is wrongfully sanctioned by the asset freezing mechanism for having a similar name as the designated individual or group, may apply for the lifting of the freeze by submitting to the AMLC relevant identification documents such as the national ID, passport, birth certificate, certificate of registration issued by appropriate government agency, and the like.

No administrative, criminal or civil proceedings shall lie against any person or entity for acting in good faith when implementing the TFS as provided under pertinent UNSC Resolutions.

2. What are the exemptions to the assets freeze (filed with the UN Security Council Committee)?

The designated person may submit to the AMLC an application for exemption to get access to a certain amount of the frozen asset. There are two types of exemptions to assets freeze:

- ▶ Basic expenses - include payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, among others. This also includes payment of reasonable professional fees, and reimbursement of incurred expenses associated with the provision of legal services and fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources.
- ▶ Extraordinary expenses - other categories than the ones mentioned under paragraph 1(a) of UNSC Resolution 1452 (2002), provided that such determination has been notified by the relevant State(s) to the Committee and has been approved by the Committee.

For TFS on PF, designated persons or entities may apply to the AMLC for an authorization to make payment due under a contract entered into prior to the listing (designation) of such person or entity.

3. Is there a plan or could the AMLC publish lists of sanctioned/high risk countries, for consistency of territories to be monitored by BSFIs/CPs?

The AMLC will study consolidating the sanctions list for TFS.

Guidelines on the Submission of the Supplemental Report to the Financial Reporting Package (FRP) on Modified and Restructured Loans

Memorandum No. M-2022-008

► **Submission Guidelines:**

1. All BSFIs under the FRP Framework shall use the Supplemental Report to the FRP Data Entry Template (DET) and its corresponding Control Prooflist (CP) which can be downloaded from www.bsp.gov.ph/ses/reporting_templates or directly requested from BSP-Department of Supervisory Analytics (DSA) through DSAREports@bsp.gov.ph. In requesting the said files, covered BSFIs shall follow the prescribed format as the subject, [REQUEST] FRP_SRL Template.
2. All covered BSFIs shall submit the Supplemental Reports to the FRP (Solo and Consolidated basis) DET and CP as of end September 2021 and end-December 2021 through the DSAREports@bsp.gov.ph on or before 15 February 2022.

The supplemental reports for the periods beginning end January 2022 shall be submitted to DSA within the following deadlines:

Industry	Deadline
UKBs/TBs	15 banking days after end of reference month for solo basis and 30 banking days after end of reference quarter for consolidated basis
RBs/ TCs	15 banking days after end of reference quarter
NSSLAs	30 calendar days after end of reference quarter

- All covered BSFIs shall apply the prescribed format for the subject:

FRP_SRL<space>BSFI Name,<space><Reference period>

For example,

To : DSAREports@bsp.gov.ph

Subject : FRP_SRL BSFI Name, 30 September 2021

and using the prescribed file naming convention, as illustrated below:

File	File Name	File Format
DET	FRP_SRL-basis	xls
CP	FRP_SRL-basis-CP	pdf

Memorandum No. M-2022-008 provides the submission guidelines that shall be observed beginning reports as of end-September 2021.

- ▶ All covered BSFIs shall only use e-mail addresses officially registered with the DSA in electronically submitting reports in accordance with BSP Memorandum No. M-2017-028 dated 11 September 2017. The same registered e-mail address/es shall be used by the DSA in acknowledging the submitted reports.
- ▶ All covered BSFIs that are unable to transmit electronically can submit the DET and CP in any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

The Department Head

Department of Supervisory Analytics (DSA)
 Bangko Sentral ng Pilipinas
 11th Floor, Multi-Storey Building
 BSP Complex, A. Mabini Street, Malate
 1004 Manila

3. Queries regarding the Supplemental Reports to the FRP, its related regulations and guidelines shall be sent via e-mail to DSAREports@bsp.gov.ph following the prescribed format for the subject, [INQUIRY] FRP_SRL.

▶ **Important Reminders**

1. The following may result in an erroneous or failed submission:
 - ▶ Failure to use an officially registered e-mail address;
 - ▶ Failure to use the prescribed subject line or reporting date;
 - ▶ Failure to use the correct templates;
 - ▶ Transmitting to the wrong e-mail address; and
 - ▶ Failure to use the prescribed file names and file format.
2. Report submissions that do not conform with the prescribed procedures shall not be accepted and will be considered non-compliant with the existing reportorial requirements subject to applicable penalties for late and/or erroneous submission.

Guidelines on the Electronic Submission of the DDA Reconciliation Statement Report through the BSP Financial Institution Portal (FI Portal)

Memorandum No. M-2022-009

▶ **Submission Guidelines**

1. All Banks and NBQBs shall use the prescribed DDA Reconciliation Statement Data Entry Template (DET), Control Prooflist (CP) and User Guide, which can be downloaded from www.bsp.gov.ph/SES/reporting_ templates or may be directly requested from BSP-Department of Supervisory Analytics through DSAREports@bsp.gov.ph. In requesting the said template, covered institutions shall follow the prescribed format as the subject: [REQUEST] DDA Reconciliation Statement Template.
2. For semester ending 31 December 2021, all Banks and NBQBs shall submit the DDA Reconciliation Statement report through the FI Portal on or before 28 February 2022. Subsequent reports will be due for submission within 15 banking days from the end of reference semester.

Memorandum No. M-2022-009 provides guidelines for all banks/ quasi-banks to observe in the electronic submission of the DDA Reconciliation Statement beginning 31 December 2021.

- The DET and CP shall be submitted through the FI Portal using the prescribed file naming convention and file extension/format, as identified below:

File	File Name	File Format
DET	DDA	xls
Control Prooflist	DDA-Control Prooflist	pdf

- Banks and NBQBs that are unable to transmit electronically can submit the DET and CP in any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

The Department Head

Department of Supervisory Analytics (DSA)
 Bangko Sentral ng Pilipinas
 11th Floor, Multi-Storey Building
 BSP Complex, A. Mabini Street, Malate
 1004 Manila

- Report submissions should continue to comply with existing BSP reporting standards. It likewise follows that only files prescribed by the BSP for the report shall be accepted, subject to validation and applicable penalties for reporting violations.
- Queries regarding the DDA Reconciliation Statement Report, its related regulations and guidelines shall be sent via e-mail to DSAReports@bsp.gov.ph following the prescribed format as the subject, [INQUIRY] DDA_Recon.

Guidelines on the Electronic Submission of Annual Report of all Interlocking Positions of its Directors and Officers (ARIPDO)

Memorandum No. M-2022-010

► **Submission Guidelines**

- UKBs, including their subsidiary and affiliate BSFIs, and stand-alone IBs, TBs, RBs, CBs, DBs, QBs, and NBFIs with TA and TCs shall follow the General Instructions (GI) and Detailed Guide (DG) in accomplishing the ARIPDO Data Entry Template (DET). These files can be downloaded from www.bsp.gov.ph/SES/reporting_templates or may be directly requested from the BSP-Department of Supervisory Analytics (DSA) through DSAReports@bsp.gov.ph. In requesting for the said DET, GI and DG, covered institutions shall follow the prescribed format as the subject: [REQUEST] ARIPDO Data Entry Template, General Instructions and Detailed Guide.
- Covered BSFIs shall individually submit the accomplished DET within 20 banking days after end of reference year to the prescribed email address, DSAReports@bsp.gov.ph, using the required format for the subject line as follows:

ARIPDO<space><Name of BSFI><space><Reference Date>

For example:

To : DSAReports@bsp.gov.ph
 Subject : ARIPDO <ABC Bank>, 31 December 2021

Memorandum No. M-2022-010 provides the guidelines to be observed by UKBs, including their subsidiary and affiliate BSFIs, and stand-alone IBs, TBs, RBs, CBs, DBs, QBs, and NBFIs with TA and TCs in the electronic submission of the ARIPDO beginning 31 December 2021 report.

3. The prescribed file name and format shall be used in submitting the DET, **ARIPDO-<BSFI Acronym>.xls**.
4. For the 31 December 2021 ARIPDO report, submission deadline has been extended to 30 April 2022 pursuant to Memorandum No. M2022-006 dated 21 January 2022 on Operational Relief on the Submission of Prudential Reports to the BSP-Financial Supervision Sector. Henceforth, regular submission shall resume for reports with reference date ending 31 December 2022 in accordance with prescribed timelines.
5. Only electronic submission originating from officially registered email address/es of the covered BSFIs pursuant to Memorandum No. 2017-028 shall be recognized and accepted by the DSA. The acknowledgement receipt for the submitted report will be sent to the same registered email address/es.
6. Covered BSFIs that do not have interlocking positions of its Directors and Officers as of reference date shall still be required to submit the ARIPDO DET to the above-mentioned DSA email address using the prescribed format.
7. Hard copy submission shall no longer be accepted. Covered BSFIs that are unable to transmit via email may submit the accomplished DET in any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

The Department Head

Department of Supervisory Analytics (DSA)
Bangko Sentral ng Pilipinas
11th Floor, Multi-Storey Building
BSP Complex, A. Mabini Street, Malate
1004 Manila

8. Queries regarding the ARIPDO, its related regulations and guidelines shall be sent via e-mail to DSAREports@bsp.gov.ph following the prescribed format as the subject, [INQUIRY] ARIPDO.

▶ **Important Reminders**

1. The following may result in an erroneous or failed submission:
 - ▶ Failure to use the correct template;
 - ▶ Failure to use an officially registered email address;
 - ▶ Transmitting to a wrong email address;
 - ▶ Failure to use the prescribed subject line or reference period;
 - ▶ Failure to use the prescribed filename; and
 - ▶ Failure to correct file format.
- ▶ Report submissions that do not conform with the above prescribed guidelines shall not be accepted and shall be considered non-compliant with the BSP reporting requirements as prescribed under Section 171 of the MORB and Sections 172-Q, 134-T, and 143-N of the MORNBF, subject to applicable penalties for delayed, erroneous, and/or unsubmitted reporting of ARIPDO.

Bureau of Customs

Customs Bonded Warehouses

CAO No. 01-2022 was issued to implement Sections 301 and 303, Chapter 2, Title III, in relation to Section 204 and other relevant sections of Republic Act No. 10863, otherwise known as the CMTA and consolidates all existing CAOs dealing on CBWs.

CAO No. 01-2022 dated 03 February 2022

- ▶ This CAO applies to all types of CBWs listed in the CMTA and those that may be created by the Secretary of Finance.
- ▶ The District Collector, subject to the approval of the BOC Commissioner, shall designate and establish customs warehouses for the storage of imported goods or for other special purposes when the business of the port and trade requires such facilities.
- ▶ The District Collector shall supervise and control the CBWs, including their expansion, extension additional facilities and goods stored and introduced thereat. The supervision and control shall extend to the warehouse and facilities of duly authorized members, Client/End-Users, Client-Exporters, and sub-contractors of CBWs. In cases where the Client/End-Users, Client-Exporters, and sub-contractors of CBWs are also a Free Zone enterprise, the exercise of supervision and control shall be made in coordination with the government agency concerned.
- ▶ Types of Customs Bonded Warehouse
 1. Manufacturing Customs Bonded Warehouse (MCBW) is a warehouse established for the manufacture of products utilizing raw materials or components that are imported duty and tax-free conditioned on the exportation of finished products within the period prescribed, or withdrawal for domestic consumption upon payment of duties and taxes, provided that raw materials entered for consumption shall not exceed 30% of the volume of raw materials entered for warehousing.

MCBW shall include Miscellaneous Manufacturing Bonded Warehouse (MMBW), Garments and Textile Manufacturing Bonded Warehouse (GTMBW), Customs Common Bonded Warehouse (CCBW), or Industry-Specific Customs Bonded Warehouse (ICBW)
 2. Non-manufacturing Customs Bonded Warehouse (NCBW) is a warehouse where goods are stored duty and tax free conditioned on the eventual withdrawal of the goods for consumption and shall only be withdrawn within the period prescribed upon payment of the corresponding duties, taxes and other charges whether or not the goods are in the same state as imported, example of which is a Private Customs Bonded Warehouses (PCBWs).
- ▶ All existing public bonded customs warehouses are classified as Customs Facilities and Warehouse (CFW) without prejudice to all the rights, conditions, and obligations acquired or vested before the implementation of this CAO.
- ▶ The Authority to Operate a CBW is personal to the warehouse operator and shall not be transferred or assigned for whatever reason. Any person who is found to be operating as a bonded warehouse without a valid customs authority shall be barred from being granted any warehousing privileges.

- ▶ A Free Zone Locator/Enterprise may be accredited by the Bureau of Customs (BOC) as a Sub-contractor of a MMBW, GTMBW, or of an accredited member of a CCBW.
- ▶ Here are the terms and conditions of the Authority to Operate a CBW.
 1. The exemption from duty and tax of goods in CBWs shall apply to goods duly entered for warehousing in CBWs. It shall be exempt from duty and tax within the prescribed period for storage and must be withdrawn from the warehouse either for manufacture into export products, repacking, for distribution to foreign markets, for sale to MCBW, transfer to subcontractors or members of CCBWs, or any transfer to accredited clients/end users.
 2. The exemption shall not apply to importation of implements, machineries, spare parts and apparatus, supplies and tools to be used to construct, repair or operate any MCBW unless these supplies and spare parts are indispensably needed in the production of finished products for exports subject to the presentation of a Certificate of Qualification from BOI and/or the corresponding exemption from the DOF.
 3. The importer shall submit the complete documents for the liquidation of the entry within a non-extendible period of 60 days from the date of complete and full exportation.
 4. The CBWs and its members may import goods based on its approved Statement of Raw Material Importation Requirement (SMRMIR) as duly authorized by the BOC.
 5. A compliance rating system shall be established by the BOC Commissioner to measure and assess the compliance and performance levels of all CBWs especially with regard to applicable laws, rules and regulations and other performance factors. Periodic audits shall also be conducted on a CBW. A CBW is required to keep its documents for three years.
- ▶ Bonded warehouses are required to comply with the following requirements before they may be allowed to operate:
 1. Assignment of Customs Officers and Personnel;
 2. Provision for a Suitable Working Space for BOC Personnel;
 3. A door and entrance to a CBW and designated compartments for new materials, finished goods, rejects and by-products with secure locking system;
 4. Assignment of Warehouse Number;
 5. Payment of Warehouse Supervision Fee;
 6. Installation of Required Signages;
 7. Conduct of Final Inspection for Compliance Check;
 8. Registration in CPRS of CBW Operations; and
 9. Posting of the General Warehousing Bond, Performance Bond and General Transportation Surety Bond (GTSB).

- ▶ The BOC is responsible for the licensing of all CBWs. The Application for Authority to Operate a CBW will be filed with the District Collector where the CBW is located. The District Collector may reject an application at any stage during the evaluation process in cases where the application is attended with fraud, misrepresentation or non-disclosure of material information, or the applicant does not meet the regulatory requirements to operate a CBW. After evaluation, the District Collector may recommend the approval of the application with the Customs Bonded Warehouse Committee (CBWC) or reject the application. In case of rejection, the applicant may request for reconsideration upon completion of the lacking documents and/or when the grounds for rejection have ceased to exist.
- ▶ The CBWC is constituted by the BOC Commissioner and is headed by the Deputy Commissioner for Assessment and Operation and Coordinating Group (AOCG). The CBWC shall evaluate, review and consolidate all applications for the establishment and renewal of CBW Authority to Operate and other related matters pertaining to the operations of the CBW.
- ▶ The BOC Commissioner shall act on the application based on the recommendation for approval of the CBWC. Upon approval of the CBW Application, the BOC Commissioner shall issue a Certificate of Authority to Operate. The Authority to Operate shall be valid for three years counted from the date of the approval of the application for establishment. If the term of the lease contract submitted is less than three years, the validity of the Authority to Operate shall be co-terminus with the lease contract unless a new Contract of Lease with a longer period is submitted.
- ▶ CBWs granted with Authority to Operate shall be required to submit annually their Income Tax Returns, certified true copy of Mayor's Permit, Audited Financial Statements, Export and Import Performance, and Year-End Stock Inventory Report. Failure to submit the same is a ground for the suspension or cessation of operations of the CBW.
- ▶ The application for renewal shall be filed not later than 90 days but not earlier than 120 days before its expiration. Late filing of the application for renewal of authority to operate shall cause the imposition of penalties.
- ▶ The CBW operator and an accredited member may be allowed to introduce structural changes or additional facilities in the CBW provided that the ingress and egress or the physical security feature of the CBW shall not be altered or compromised. The CBW operator or accredited member shall file the application with the District Collector prior to the introduction of the changes or additional facilities.
- ▶ The CBW operator may apply for an extension warehouse which should be located within the territorial jurisdiction of the District Collector who has control over the main warehouse.
- ▶ A CBW may be allowed to relocate upon approval by the BOC Commissioner as recommended by the District Collector. In case the relocation is to another structure or warehouse within the same compound or building, the application shall be approved by the concerned District Collector. Any unauthorized relocation shall be a ground for suspension or revocation of the authority to operate issued to the CBW, its members or subcontractors, as the case may be.
- ▶ Goods entered for warehousing may remain in a CBW for a maximum period of one year from the time of its arrival at the warehouse. For perishable goods, the storage period shall be three months from the date of arrival at the warehouse and it is extendible for valid reasons for another three months upon written request.

Bonded raw materials withdrawn shall be manufactured and exported within one year from the time of arrival at the CBW. Bonded goods not withdrawn either for manufacture or export shall be deemed abandoned.

- ▶ A CBW operator shall have the following duties and responsibilities
 1. Comply with all customs rules and regulations;
 2. Present evidence of payment of duties, taxes and other charges to the customs warehouseman or customs storekeeper before making any withdrawal from the warehouse in case of PBWCs or local sales;
 3. Implement effective security measures;
 4. Indemnify the BOC of duties and other charges on lost or destroyed, damaged, pilfered or stolen goods while in storage due to the operator's negligence or willful misconduct;
 5. Allow access to the premises and extend assistance to examiners, inspectors, inventory and audit teams, and other authorized personnel with mission orders to conduct examination, physical and records inventory or audit of cargoes stored in the CBW;
 6. Pay the collector of customs at the port all applicable fees; and
 7. Provide necessary office space, equipment and supplies to customs personnel assigned to the CBW.

- ▶ The CBW operator shall be jointly and severally liable with its accredited member and/or subcontractor for any violation committed.

- ▶ The BOC may initiate proceedings for the suspension of the Authority to Operate and closure of CBW without prejudice to the imposition of administrative penalties and filing of criminal charges against the responsible person in the following circumstances:
 1. Discontinuance requested by the CBW operator;
 2. Filing an application containing false information for establishment or renewal of CBW Authority to Operate;
 3. Failure to file application for renewal;
 4. Being inactive for a continuous period of at least one year;
 5. When the operator or responsible official knowingly allow the use of the warehouse for illegal activities;
 6. Unauthorized relocation or use of extension warehouse;
 7. Unauthorized changes in the CBW lay-out;
 8. Unauthorized structural changes of the CBW and/or its extension warehouse;
 9. Withdrawal of any material/article stored in a CBW without the duly processed withdrawal or requisition slip, without prejudice to the confiscation of the general warehousing bond;
 10. Illegal withdrawal of any imported material or finished article from the CBW; and
 11. Violation of customs rules and regulations on CBW operations.

- ▶ The BOC Commissioner may order the audit and inspection of CBWs by the Warehousing Monitoring and Audit Unit (WMAU) of the Post Clearance Audit Group (PCAG) on the following grounds:
 1. Information from internal sources;
 2. Referral from the District Collector/or warehousing operating divisions;
 3. Derogatory report/information from external sources;
 4. As a pre-requisite for renewal of license to operate a CBW;
 5. Voluntary closure; and
 6. As directed by the BOC Commissioner

- ▶ The BOC shall impose annual supervision fee on the operations of CBWs, including extensions and additional facilities.
- ▶ Sanctions shall be imposed on the operator without prejudice to criminal and other administrative liabilities provided under the CMTA on the following offenses:
 1. Diversion of the bonded goods;
 2. Unauthorized Withdrawal or Transfer of Goods to another CBW or Free Zone;
 3. Unauthorized Relocation of CBW;
 4. Unauthorized Changes in the CBW Lay-out;
 5. Unauthorized Structural Changes of the CBW and/or of its Extension Warehouse;
 6. Late Filing of Application for Renewal;
 7. Late Exportation;
 8. Late Submission of Documents for Liquidation of Goods Declaration for Warehousing; and
 9. and Late Submission of Documents for Cancellation of Warehousing Bonds.
- ▶ This CAO is effective 30 days after its publication at the Official Gazette or a newspaper of general circulation or on 12 March 2022.

E-TRACC Implementation and Guideline on Import and Export Cargoes for Customs Bonded Warehouse

AOCG Memo no. 45-2022

- ▶ As the case may be, CBW import cargoes shall be sealed with Electronic Customs Seal/ Electronic GPS from port to CBW. Upon arrival of the containers at destination, the warehouseman or customs guard may be required to take visual evidence of the container and the relevant information therein, transmit information for approval of the end trip and manual removal of the electronic customs seal upon authorization.
- ▶ As the case may be, CBW export cargoes shall be sealed with Electronic Customs Seal/Electronic GPS before leaving the CBWs to the port of loading. Once the container arrives at the port of loading and the end trip authorization is approved, the Customs Container Control Division (CCCD) personnel shall disarm the electronic container seal.
- ▶ BOC Import or Export Examiner/Appraiser or any BOC Authorized Customs Officer responsible for processing import or export clearance will not approve any import or exports SAD without the required E-TRACC Booking.
- ▶ 100% implementation of ETRACC shall commence on 1 March 2022 for selected ports.

Acceptance of Scanned Copies of Certificates of Origin as a Special Measure under various Free Trade Agreements Amidst the COVID-19 Pandemic

AOCG Memo no. 38-2022 dated 3 February 2022

AOCG Memo No. 45-2022 provides for the guidelines on the E-TRACC implementation on import and export cargoes for CBWs.

AOCG Memo no. 38-2022 provides information that the BOC shall accept scanned copies of COs under various free trade agreements. The BOC will only accept the said copies provided that the original copies will be submitted not later than 30 days from the date of importation.

PEZA Updates

PEZA MC No. 2022-007 provides amendment to MC 2021-056 Re: Period of Coverage for Submission and Additional Data Fields.

PEZA MC No. 2022-007 dated 4 February 2022

- ▶ The online submission in the Information Technology Sector - Report Compliance System (ITS-RCS) as required in PEZA Memorandum Circular No. 2021-056 dated 30 September 2021 is amended and shall not be submitted on a monthly basis due every 5th of the following month beginning February 2022 and onwards.
- ▶ For the transition period, a window applicable for the period 16 December 2021 to 31 January 2022 will be open for submission and will be closed on 11 February 2022.

PEZA MC No. 2022-008 provides for the update on the Online Submission of EZMPR.

PEZA MC No. 2022-008 dated 8 February 2022

- ▶ All enterprises required to submit their EZMPR are advised of the following:
 1. New enrollees are required to provide a copy of the nomination form duly signed by the highest official of the company with endorsement from the Zone Supervising manager.
 2. Confirmatory checkboxes will be utilized for each part (7 items) of the EZMPR upon saving the report.
 3. Flagged items on the submission will be visible and would require confirmation from the company or the Zone Offices or Head Office.
 4. There will be additional fields in the Data Entry Form which enterprises need to provide.
- ▶ The updated EZMPR format will be effective beginning report submission applicable for the month of January 2022. Attached in the Memorandum Circular are copies of the EZMPR 022 (excel file) and Locator Manual 2022.

Board of Investments

BOI MC No. 2022-001 circularizes the BOI CCPD Program.

BOI MC No. 2022-001 dated 26 January 2022

- ▶ In order to carry out the intent and purposes of E.O. No. 226, as amended by R.A. No. 11534 or the CREATE Act, the Board adopted the BOI CCPD Program as follows:
 1. The Registered Business Enterprise (RBE) under CREATE Act that availed at least Php500,000.00 of ITH incentive either during the first or second of its ITH entitlement periods shall undertake any of the following activities determined by the BOI that are purposive to the needs of the country under the BOI CCPD Program:
 - ▶ Provide basic amenities such as food, accommodation, transportation, and goods used to fight the effects of the pandemic (e.g., vaccines, PPE, face masks) to volunteer frontliners;

- ▶ Renovations within the public schools, donation of classroom or facilities for computers and the like;
 - ▶ Donation of computers, laptops, and other electronic gadgets that students may utilize under study from home arrangement for at least 50 public school students;
 - ▶ Donation of data subscription/internet services for a minimum of one year for at least 50 public school students;
 - ▶ Adoption and support for the protection of mangrove areas as identified by the DENR and LGUs;
 - ▶ Establishment of Facilities/Institution of equipment that provides clean water or electricity;
 - ▶ Vocational or Technical Scholarship/Training Program that would lead to employment opportunities for the community; or
 - ▶ Other opportunities as may be determined by BOI.
2. The contribution to the CCPD Program shall be equivalent to the 3% of the RBE's ITH availed for the first or second ITH entitlement period, subject to a ceiling in the amount of Php5,200,000.00.
 3. The requirement under the CCPD Program shall be accomplished by the RBE within the ITH entitlement period of the registered project or activity. If the RBE is in default in complying with the CCPD requirement within the allowed period, the ITH entitlement of the RBE in its final year of availment shall be deducted an amount equivalent to 3% of its highest ITH availed within the period of ITH entitlement, but not to exceed Php5,200,000.00.
 4. The compliance with the CCPD Program shall be undertaken on a per project registration basis and shall be reflected in the project's Specific Terms and Conditions (STCs). The RBE shall submit its intended community beneficiary and guarantee that the CCPD activity selected does not overlap with the project of other government agencies. The grant to the RBE of the last year of the ITH incentive shall be subject to submission of proof of compliance with the CCPD Program prior to the filing of its application for ITH incentives for the last year of the project's ITH entitlement period.
- ▶ The Circular took effect upon publication in a newspaper of general circulation and three copies thereof filed with the Office of the National Administrative Registrar (ONAR), University of the Philippines (UP) Law Center, Diliman, Quezon City.
 - ▶ The Circular was published in the Philippine Star on 5 February 2022

SEC Issuances

Adoption of Philippine Standards on Auditing (PSAs) and Philippine Financial Reporting Standards (PFRSs)

SEC MC No. 1 dated 27 January 2022

The SEC provides for the adoption of the following PSAs and PFRSs as part of SEC's rules and regulations on financial reporting:

SEC MC No. 1, s. 2022 adopts PSAs and PFRSs as part of its rules and regulations on financial reporting.

► PSAs

Pronouncement	Effectivity date
1. PSA 250 (Revised) Consideration of Laws and Regulations in an Audit of Financial Statements including Related Conforming Amendments to other Philippine Standards	Effective for audits of financial statements for periods beginning on or after 15 December 2020.
2. PSA 540 (Revised) Auditing Accounting Estimates and Related Disclosures and Conforming and Consequential Amendments and Other Philippines Standards Arising from PSA 540 (Revised)	Effective for audits of financial statements for periods beginning on or after 15 December 2020.
3. Philippine Standard on Auditing 315 (Revised 2019), Identifying and Assessing the Risks of Material Misstatement and, Conforming and Consequential Amendments to Other Philippine Standards Arising from PSA 315 (Revised 2019)	Effective for audits of financial statements for periods beginning on or after 15 December 2021
4. Philippine Standard on Related Services 4400 (Revised), Agreed-upon Procedures Engagements	Effective for agreed-upon procedure engagements for which the terms of engagements are agreed on or after 1 January 2022.
5. Suite of Quality Standards <ul style="list-style-type: none"> <li data-bbox="708 1200 1094 1480">a. Philippine Standard on Quality Management 1 (Previously Philippine Standard on Quality Control 1), Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements <li data-bbox="708 1520 1094 1610">b. Philippine Standard on Quality Management 2, engagement Quality Reviews <li data-bbox="708 1778 1094 1897">c. Philippine Standard on Auditing 220 (Revised), Quality Management for an Audit of Financial Statements 	<p data-bbox="1129 1200 1509 1229">Effective as of 15 December 2022</p> <p data-bbox="1129 1520 1519 1738">Effective for Audits and reviews of financial statements for periods beginning on or after December 15, 2022; and effective for other assurance and related services engagements beginning on or after 15 December 2022.</p> <p data-bbox="1129 1778 1497 1868">Effective for audits of financial statements for periods beginning on or after 15 December 2022.</p>

► PFRSs

Pronouncement	Effectivity Date
1. Annual Improvements to PFRS Standards 2018-2020	Effective for annual periods beginning on or after 1 January 2022
2. Amendments to PAS 1, Classification of Liabilities as Current or Non-Current	Effective for annual periods beginning on or after 1 January 2023
3. Amendments to PAS 16, Property, Plant and Equipment: Proceeds before intended Use	Effective for annual periods beginning on or after 1 January 2022
4. Amendments to PFRS 37, Onerous Contracts - Costs of Fulfilling a Contract	Effective for annual periods beginning on or after 1 January 2022
5. Amendments to PFRS 17, Insurance Contracts	Effective for annual periods beginning on or after 1 January 2023
6. Amendments to PFRS 3, Reference to the Conceptual Framework	Effective for annual periods beginning on or after 1 January 2022
7. Amendments to PFRS 16, Covid-19 Related Rent Concessions beyond 30 June 2021	Effective for annual periods beginning on or after 1 April 2021
8. Amendments to PAS 1 and PFRS Practice Statement 2, Disclosure of Accounting Policies	Effective for annual periods beginning on or after 1 January 2023
9. Amendments to PAS 8, Definition of Accounting Estimates	Effective for annual periods beginning on or after 1 January 2023
10. Amendments to PAS 12, Deferred Tax related to Assets and Liabilities arising from a Single Transaction	Effective for annual periods beginning on or after 1 January 2023

- All of the foregoing pronouncements have been adopted by the Auditing and Assurance Standards Council and Financial Reporting Standards Council and approved by the Board of Accountancy and Professional Regulation Commission and published in the Official Gazette.

(Editor's Note: SEC Memorandum Circular No. 1, s. 2022 was published in Manila Standard and Business Mirror on 3 February 2022)

Schedules for Filing of Annual Financial Statements and General Information Sheet

SEC MC No. 2, s. 2022 provides for the schedules for filing of Annual Financial Statements and General Information Sheet.

SEC MC No. 2 dated 19 January 2022

The SEC provides for the schedules for filing of Annual Financial Statements and General Information Sheet.

Audited Financial Statements of Companies whose Fiscal Year ends on 31 December 2021

- ▶ All corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, shall file their AFS depending on the last numerical digit of their SEC registration or license number in accordance with the following schedule through the eFAST:

1-15 July	1 and 2
16-31 July	3 and 4
1-15 August	5 and 6
16-31 August	7 and 8
1-15 September	9 and 0

All Extension Offices shall be governed also by the above coding schedule in 2022. Any corporation may file on or before its respective filing dates also through eFAST.

- ▶ The above filing schedule shall not apply to the following corporations:
 1. Entities whose fiscal year ends on a date other than 31 December 2021 shall file their AFS within 120 calendar days from the end of their fiscal year.

However, for a Broker Dealer whose fiscal year ends on 31 December, SEC Form 52-AR shall be filed with the Commission depending on the last numerical digit of its registration number as prescribed by the Commission. Broker Dealers whose fiscal year ends on a date other than 31 December shall file SEC Form 52-AR, 110 calendar days after the close of such fiscal year.
 2. Those whose securities are listed on the Philippine Stock Exchange (PSE) and those which are covered under Section 17.2 of the SRC, except those companies which filed Notification of Suspension to file reports under Section 17 of the SRC (SEC Form 17-EX) are encouraged to observe the due date of filing of their AFS (within 105 calendar days after the end of the fiscal year) as an attachment to their Annual Reports (SEC Form 17-A), in accordance with the Implementing Rules and Regulations of the SRC. Subject entities are given an extension until 15 May 2022, to file their Annual Reports (SEC Form 17-A). Given this, the filing of SEC Form 17-L shall not be available anymore.
 3. Those whose AFS are being audited by the Commission on Audit (COA) provided that the following documents are attached to their AFS:
 - ▶ An Affidavit signed by the President and Treasurer (or Chief Finance Officer, where applicable) attesting to the fact that the company timely provided COA with the financial statements and supporting documents and that the audit of COA has just been concluded; and
 - ▶ A letter from COA confirming the information provided in the above Affidavit.

- ▶ All corporations may file their AFS regardless of the last numerical digit of their registration or license number on or before the first day, as stated in the coding schedule in paragraph 1 pertaining to said digit.
- ▶ Late filings or filing after respective due dates shall be accepted starting 16 September 2022 and shall be subject to the prescribed penalties which shall be computed from the date of the last day of filing schedule.
- ▶ The AFS, other than the consolidated financial statements, shall have the stamped "received by the Bureau of Internal Revenue (BIR) or its authorized banks, unless the BIR allows an alternative proof of submission for its authorized banks (e.g., bank slips) and/or other facilities.
- ▶ Failure to comply with any of the formal requirements under SRC Rule 68, including the prescribed qualifications for independent auditors and/or any material deficiency or misstatement that may be found upon evaluation of the specific contents thereof, shall be considered sufficient grounds for the imposition of penalties by SEC. The acceptance and receipt by the Commission of the financial statements shall be without prejudice to such penalties.
- ▶ The General Financial Reporting Requirements as stated in the Revised SRC Rule 68 states the threshold for an AFS.
- ▶ Corporations which do not meet the threshold may submit their Annual Financial Statements accompanied by a duly notarized Treasurer's Certification only (rather than an Auditor's Report).

General Information Sheet (GIS)

- ▶ All corporations shall file their GIS within 30 calendar days from:
 1. Stock Corporations - date of actual annual stockholder's meeting
 2. Non-Stock Corporations - date of actual annual members meeting
 3. Foreign Corporations - anniversary date of the issuance of the SEC License

All Reports

- ▶ All corporations (stock or non-stock) are required to file their annual reportorial requirements (AFS and GIS) through eFAST by applying the SEC issued number coding schedule for AFS. Other reports not available in the eFAST may be submitted by sending through email at ictdsubmission@sec.gov.ph.
- ▶ Submission of reports Over-the-Counter (OTC) and/or through mail/courier via SENS shall **no longer be accepted**.
- ▶ All reports submitted through eFAST are scanned or digital copies of the manually signed or digitally signed reports. The responsibility to ensure the integrity and authenticity of the e- signature rests upon the signatory or authorized signatory of the filer. All electronic transactions referred to in this memorandum shall be governed by the existing and prevailing laws and regulations, as applicable.
- ▶ This Memorandum Circular shall take effect immediately after its publication in two newspapers of general circulation.

(Editor's Note: SEC Memorandum Circular No. 2, s. 2022 was published in Manila Bulletin and The Philippine Star on 10 February 2022)

Extension of the submission deadline of the AIRDF

The SEC Notice extends the deadline to submit the AML/CFT AIRDF from 30 November 2021 to 28 February 2022.

SEC Notice dated 21 January 2022

All covered persons who failed to accomplish the AIRDF in November 2021 due to some valid cause are directed to accomplish the AIRDF and to submit the same on or before 28 February 2022.

Failure to submit the AIRDF within the period provided shall constitute a violation of SEC Memorandum Circular No. 26, Series of 2020.

Guidelines in the Filing or Submission of the MDF

The SEC Notice provides for Guidelines in the Filing of Submission of the MDF.

SEC Notice dated 10 February 2022

Pursuant to Memorandum Circular No. 25 series of 2019, all non-stock corporations are required to comply with the one-time submission of the MDF. All non-stock corporations registered after the effectivity of Memorandum Circular No. 25 series of 2019 shall submit the required information in the MDF, as may be applicable, within six months from date of registration.

Those who have not submitted the said requirement as of the deadline on 31 July 2020 may fill out the online MDF thru <https://forms.gle/2HMFZqXtLYRmJuDD8>

The complete step by step guide may also be found in SEC's website https://www.sec.gov.ph/2020faq_online-mdf_06mar2020/

The following are the guidelines in the filing or submission of the MDF:

- ▶ Printed copies of the MDF must be duly notarized. Only one original copy will be received by the SEC.
- ▶ The allowed means of filing/submission of printed MDF are: (a) via courier services; (b) registered mail; (c) electronic mail to mdfsubmission_aml@sec.gov.ph. The parties filing their MDFs through courier and registered mail shall include a duplicate copy of the MDF for their receiving copy.
- ▶ The public is urged, as much as possible, not to personally come to the SEC Main Office to submit the MDFs to avoid unnecessary exposure to COVID-19. Printed and notarized MDFs may still be accepted and received at the SEC-Extension Offices (EOs).
- ▶ The printed and notarized MDF must be submitted on or before the specified deadline as failure to do so would be a ground for the imposition of applicable penalties and/or revocation of the Certificate of Incorporation of the concerned Non-Stock Corporation as provided for in Memorandum Circular No. 25, Series of 2019.

Court of Tax Appeal Cases

Refund/Issuance of Tax Credit

Orica Philippines, Inc. vs. Commissioner of Internal Revenue

CTA EB No. 2367 promulgated 3 February 2022

In order to properly claim a refund representing the unutilized input VAT in relation to revenues earned from goods sold to non-resident foreign corporations or manufacturers/producers registered with the BOI, compliance with Sections 112 and 113 of the Tax Code is mandatory. For sales to qualify for VAT zero-rating, it must be established that the entire product was actually exported.

Facts:

Company A had sales that were treated as sales subject to zero percent VAT since they were revenues earned from goods sold to non-resident foreign corporations or manufacturers/producers registered with the BOI, whose products are 100% exported. The input VAT relating to the said sales allegedly remained unutilized. Company A filed a claim for refund or issuance of a TCC, representing the unutilized input VAT.

The CIR, however, denied the refund application, stating that Company A failed to comply with Sections 112 and 113 of the Tax Code.

Moreover, Company A has outstanding liabilities and that the issuance of a TCC cannot be given due course until the delinquency assessments have been resolved or paid.

Company A asserts that it satisfactorily proved the inward remittance of foreign currency payments by providing the necessary bank statements. Company A also contends that it was able to prove that its sales to BOI-registered entities are correctly supported by valid BOI Certifications.

Issue:

Is Company A entitled to its claim for the refund of its excess and/or unutilized input VAT?

Ruling:

The Court partially granted the petition of Company and made the following notable pronouncements:

1. The Court is not persuaded that Company A satisfactorily proved the subject inward remittance by providing the necessary bank statements. The total deposits reflected on the subject bank statements do not tally with the total dollar amount of export sales as evidenced by the VAT zero-rated invoices.
2. There is insufficient proof that the foreign currency proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas rules and regulations as required under Sec 106 (A)(2)(a)(1) and 112(A) of the Tax Code.
3. The Court agrees with Company A in its claims that the BOI Certifications issued stating that the said entities "exported 100% of its total sales volume/value for the period" is sufficient to qualify the subject sales for VAT zero-rating. What is crucial for purposes of treating sales as zero-rated sales is the certification from the BOI that the products sold were exported and consumed in a foreign country. It is the period of coverage indicated in the BOI Certification which is controlling for the purpose of qualifying the sales as zero-rated sales and not the validity period of the said Certification.

Calamba Premier Realty Corporation vs. Commissioner of Internal Revenue
CTA EB No. 2312 promulgated 3 February 2022

To claim a refund of unutilized input VAT, strict compliance with the substantiation and invoicing requirements is necessary considering the VAT's nature and the VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction.

Facts:

Company A, via a Loan Agreement, borrowed from Company B, a PEZA registered entity, to acquire a parcel of land. Pursuant to the Loan Agreement, Company A paid Company B the interest and the VAT imposed thereto. Company A filed a Letter with Application for Tax Credit Refund covering its alleged unutilized input VAT attributable to zero-rated sales of leasing services to Company B.

The CIR rejected petitioner's claim for refund arguing the following:

- a. Only input taxes directly attributable to zero-rated transactions subject to compliance with certain conditions may be refunded.
- b. Company A must prove its entitlement to the refund sought. Company A failed in proving that it had complied with and satisfied all the statutory and administrative requirements to be entitled to the prayed for tax refund.

Issue:

Was the CIR wrong in denying Company A's claim for refund of unutilized input VAT?

Ruling:

No, the CTA also denied the petition of Company A and made the following notable pronouncements:

1. Company A failed to substantiate that it had zero-rated sales to Company B to which it attributes the refundable input VAT.
2. Section 113(A)(2) of the Tax Code, clearly provides for the mandatory invoicing requirements for lease of properties. Section 237 reiterates that VAT official receipts should be issued for rental payments.
3. The claim must not only be filed within the mandatory 120+30-day periods. The taxpayer must also prove the factual basis of its claim and comply with the Tax Code, invoicing requirements and other appropriate revenue regulations.

Company A failed to present the VAT official receipts on Company B's alleged zero-rated rental payments and to prove the factual basis of its claim and to comply with the invoicing requirements in the law and its implementing regulations.

4. Strict compliance with substantiation and invoicing requirements is necessary.
5. The rule is that the exempting provision is to be construed liberally in favor of the taxing authority and strictly against exemption from tax liability, the result being that statutory provisions for the refund of taxes are strictly construed in favor of the State and against the taxpayer.

Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.
CTA EB No. 2255, promulgated 25 January 2022

Nothing in Section 112(A) of the Tax Code, as amended, requires a taxpayer-claimant to prove the actual remittance of taxes withheld, in order to grant a refund of unutilized input VAT. Section 4.112-1(a) of Revenue Regulations No. 16-2005, which implements Section 112(A) of the Tax Code, as amended, does not impose the said requirement as well.

Facts:

Company V filed with Revenue District Office (RDO) No. 50 a claim for refund of its excess and/ or unutilized creditable input VAT for the taxable period covering 2 April 2014 to 30 June 2014, with supporting documents on 30 June 2016.

The BIR issued a letter dated 25 July 2016 denying the administrative claim for refund.

Hence, Company V filed a Petition for Review with the CTA.

BIR asserts that Company V failed to satisfy the requisite that it is engaged in zero-rated or effectively zero-rated sales. According to BIR, by entering into the Service Agreement with Company V, Company VWS clearly intended to establish a continuous business in the Philippines. Consequently, services rendered by Company V to Company VWS cannot qualify for VAT zero-rating.

Also, BIR avers that the court is bound by the BIR's denial of the refund claim by reason of Company V's failure to submit complete documents at the time of filing of its administrative claim. BIR argues as well that the evidence presented, i.e., the certificates of Creditable Withholding Taxes (CWT) withheld, which were accomplished by its withholding agents, showing the amount deducted and withheld from Company V's income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the BIR. He also claims that Company V failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

Issue:

Is Company V entitled to refund?

Ruling:

Yes. The Second Division, through its thorough examination of the evidence presented, ruled that Company VWS is a non-resident foreign corporation doing business outside the Philippines. This pronouncement was supported by documentary evidence, as follows: (1) Certificate of Non-Registration of Company issued by the SEC, (2) Consularized Articles of Association, (3) Certificate of Tax Residency issued by the Central Customs and Tax Administration of Denmark, and (4) Company Extract from the Danish Business Authority.

It is settled that findings of fact by the Court of Tax Appeals in Division are generally accorded great weight and are not to be disturbed without any showing of grave abuse of discretion, considering that the members of the Division are in the best position to analyze the documents presented by the parties.

Second, Company VWS and Company V are two distinct corporate entities separately registered in two different countries; Denmark and the Philippines. Although Company VWS is one of the shareholders of Company V, it is a fundamental principle of corporation law that "a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected." Indeed, Section 3(d) of Republic Act ("R.A.") No. 7042, as amended by R.A. No. 8179 or the Foreign Investments Act of 1991, specifies that being a shareholder in a domestic corporation does not equate to "doing business" in the Philippines.

The issues on withholding and remittance of CWT are not relevant in the refund of unutilized input VAT. Nothing in Section 112(A) of the Tax Code, as amended, requires a taxpayer-claimant to prove the actual remittance of taxes withheld, in order to grant a refund of unutilized input VAT. Section 4.112-1(a) of Revenue Regulations No.16-2005 which implements Section 112(A) of the Tax Code, as amended, does not impose the said requirement as well.

Only the following requisites must be established in order to be entitled to refund or issuance of tax credit:

- ▶ The taxpayer-claimant must be VAT-registered;
- ▶ There must be zero-rated or effectively zero-rated sales;
- ▶ That input taxes were incurred or paid;
- ▶ That such input taxes are attributable to zero-rated or effectively zero-rated sales;
- ▶ That the input taxes have not been applied against output taxes during and in the succeeding quarters; and
- ▶ The claim for refund was filed within the prescriptive period [both] in the administrative and judicial level.

Assessment

Ten-Four Readymix Concrete, Inc. vs. Commissioner of Internal Revenue

CTA EB No. 2311 promulgated 25 January 2022

Facts:

The Supreme Court ruled that when the taxpayers receive a notice or a letter other than the FDDA demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest.

On 3 January 2019, Company T wrote a letter to the Chief of the Collection Division (Chief P) inquiring about the reason for the issuance of the Preliminary Collection Letter (PCL) and the Final Notice Before Seizure (FNBS) absent receipt of any action on its previously filed protest. On 16 January 2016 Chief P issued a Warrant of Distraint and/or Levy (WDL) against Company T. On 17 January 2019, Company T wrote another letter to Chief P about the WDL's issuance despite the absence of any reply to its previous letter.

On 21 January 2019, Chief P responded to Company T. Chief P said that a copy of the Final Decision on Disputed Assessment (FDDA) was constructively served since a certain Engr. C refused to receive the said notice. According to the letter of Chief P, due to such refusal, the concerned revenue officer sought the assistance of the Barangay Captain and Barangay Secretary to witness the service of the FDDA. The letter further stated that the PCL and subsequent notices were issued due to the FDDA's finality, given that no protest was raised to either the office of Commissioner of Internal Revenue (CIR) or this Court within 30 days from the FDDA's service.

Company T, wrote another letter to Chief P, asking for the cancellation of the WDL or for its implementation to be put on hold until petitioner's receipt of the FDDA.

On 20 May 2019, Company T filed a Petition for Review before the Court of Tax Appeals in Division. The CTA Division ruled that the protest was deemed denied by the issuance of said PCL and FNBS. Hence, Company T should have appealed before this Court within 30 days from 21 December 2018 or until 20 January 2019 by filing a petition for review. Aggrieved, Company T filed a Motion for Reconsideration, but it was denied.

Company T insists that it did not receive a copy of the FDDA. It further argued that even the BIR, through the numerous letters of Chief P, has admitted that the FDDA's receipt should be the reckoning point of its period to appeal.

Issue:

Is the protest by Company T properly filed before the CTA Division?

Ruling:

No. Company T denies receiving the FDDA. Instead, Company T was served with a PCL and FNBS. However, as the First Division correctly ruled, the Supreme Court has already settled this issue in the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, it ruled that the demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the CTA, "while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as his final decision."

In herein case, when Company T received a copy of the PCL on 27 November 2018, it was already informed of the BIR's decision to collect its tax deficiencies.

The same demand for payment was merely reiterated in the FNBS that now came with a threat of legal action. Therefore, since Company T was first notified through the PCL of the BIR's decision to collect, it had 30 days from receipt thereof, or until 27 December 2018, to file a request for reconsideration with the CIR or a petition for review with the CTA.

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

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