Tax Bulletin

June 2022

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and enable businesses for a better Philippines.

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BIR Administrative Requirements

RR No. 4-2022 dated 26 May 2022

RR No. 4-2022 implements Section 295 (F), in relation to Section 294, both of the National Internal Revenue Code of 1998, as amended by the CREATE Act, on the tax treatment of the importation of petroleum and petroleum products into, and subsequent transfer, transport and/or withdrawal through and from freeport zones and economic zones.

- The VAT and Excise tax which are due on all petroleum and petroleum products that are entered and/or imported into the Zones shall be paid by the party which entered the same or the importer thereof, as the case may be, to the Bureau of Customs (BOC) prior to any and all subsequent transfer, transport and/or withdrawal of the same after its entry or importation.

- The excise tax or VAT paid, as the case may be for petroleum and petroleum products that are exported outside the Philippines or transferred, delivered and sold to the following:

  For VAT: (1) to a registered export enterprise and have been directly and exclusively used in its registered export project, activity: or (2) to entities engaged in international shipping or air transport operations and have been actually used therefor: or (3) to entities that are statutorily zero-rated for VAT under special laws or international agreements to which the Philippines is a signatory.

  For Excise Tax: (1) international carriers of Philippine or foreign registry on their use or consumption outside the Philippines; or (2) exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption; or (3) entities which are by law exempt from direct and indirect taxes.

- May be refunded by filing a claim for credit or refund with the BIR for verification and evaluation. Once approved, the claim shall be forwarded to the BOC for cash payment or issuance of a tax credit certificate, as applicable. No claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that said petroleum or petroleum products have actually been transferred, delivered, sold, and used by, the foregoing entities for the above-stated purposes.

- In case the zone registered enterprise shall subsequently (1) sell/introduce the petroleum or petroleum products, or part of the volume thereof, into the customs territory (except sales of fuel for use in international operations), or (2) sell to another zone registered business enterprise and/or party not enjoying tax privileges, no refund for taxes shall be granted for the product sold. In any event, the possessor of petroleum or petroleum products must be able to present sufficient evidence that the proper taxes due thereon have been paid, otherwise all the taxes due on said goods shall be collected from said possessor/user.

- The importation, however, of petroleum products by a registered export enterprise to be used directly and exclusively for its project or activity shall be VAT exempt but subject to excise tax.

- Moreover, the importation by a Philippine refinery enjoying fiscal incentives with an Investment Promotion Agency (IPA) of crude petroleum to be refined at its refinery inside the Zone, shall be exempt from payment of applicable duties and taxes under Section 295 (G) of the Tax Code.

- Upon lifting of the petroleum products produced from the imported crude oil, the applicable duties and taxes shall be paid thereon, thus:

  1. During Income Tax Holiday (ITH), the excise tax or VAT paid, as the case may be, on petroleum products sold to entities entitled to 0% VAT or excise tax exemption may be claimed for refund under these rules; and

  2. During 5% SCIT/GIE, the export sales and sales inside the Zones shall be exempt from VAT and excise taxes.

- The introduction into the customs territory of petroleum products produced from the imported crude oil by the said refinery to the extent of its local sales allowance, shall be subject to applicable duties and taxes payable by the importer thereof: Provided that the excise tax or VAT paid, as the case may be, paid on sale to entities entitled to 0% VAT; or excise tax exemption may be claimed for refund under these rules: Provided finally, that importations of petroleum products

produced from imported crude oil by registered export enterprises located outside the Zones and used directly and exclusively in their registered project or activity shall be exempt from VAT but subject to excise taxes.

- For each and every transfer, transport and/or withdrawal of petroleum and petroleum products, the party which entered the same or the importer thereof, as the case may be, shall, before the release thereof from Customs custody and the respective Zone Authority:

    1. Secure the prescribed ATRIG from the BIR's Excise Tax Regulator Division (ETRD) for petroleum and petroleum products imported into the zones;

    2. Pay the Value-Added and Excise Taxes, as the case may be and computed at the time of transfer, transport and withdrawal;

    3. Obtain a Withdrawal Certificate from the BIR LTFOD for petroleum and petroleum products entered into the zones. The Withdrawal Certificate shall, at all times, accompany each and every transfer, transport and/ or withdrawal of petroleum products regardless of the mode of conveyance.

- For excise tax purposes, all importers of petroleum and petroleum products shall secure a Permit to Operate with the BIR's ETRD. Such permit shall prescribe the appropriate terms and conditions which shall include, among others, the issuance of a Withdrawal Certificate and the submission of liquidation reports, for the Permitee's strict compliance.

- All tank facilities, depots or terminals throughout the Philippines, including those located within the Freeport Zones as well as within the Economic Zones, shall be registered by the owners, lessors or operators thereof with the appropriate BIR Office having jurisdiction over the said facilities as follows:

Revenue Regions Where the Storage Facilities are Located	Appropriate BIR Office Where to Register
Revenue Region Nos. 4, 5, 6, 7, 8, 9 and 10	Excise Tax Regulatory Division, National Office
Revenue Region Nos. 1, 2 and 3	Excise Tax Area I-Baguio City
Revenue Region Nos. 11 and 12	Excise Tax Area III-Bacolod
Revenue Region Nos. 13, 14	Excise Tax Area IV-Cebu
Revenue Region Nos. 15 and 19	Excise Tax Area V-Davao
Revenue Region Nos. 16, 17 and 18	Excise Tax Area VI-Cagayan de Oro

- In cases where said facilities will be used for the storage of petroleum or petroleum products or other goods subject to excise taxes, a Permit to Operate from the BIR shall be issued. The said permit shall prescribe the appropriate terms and conditions which shall include, among others, the maintenance of Official Register Books or their equivalent, issuance of Withdrawal Certificate for every removal from the refinery or customs custody to the point of destination and succeeding transfer of petroleum products, joint supervision over the facilities with the BIR through the assignment of revenue officers, and stocktaking/physical inventory taking of petroleum and petroleum products stored therein. The monitoring requirements prescribed in this Section and in the permit granted shall likewise be strictly observed.

- A facility which will not be used for storage of petroleum or petroleum products or other articles subject to excise taxes, if satisfactorily established to the BIR will be issued a Permit to Operate Exempt Facility. This notwithstanding, both Permit to Operate and Permit to Operate Exempt Facility should categorically state the goods stored therein, and should any changes be planned, an application for new permit should be made.

- All owners, lessors or operators of tank facilities, depots or terminals shall submit the following copies of documents to the appropriate BIR Offices within 15 days from the date of effectivity of these Regulations:

    1. BIR Certificate of Registration;

    2. Latest Blueprint of the Perspective Design of the whole storage facility, depot or terminal specifically containing, among others, the tanks located therein, duly approved by a licensed professional authorized by law to issue such document;

    3. Lease or Operating Agreement, in case the whole facility, depot or terminal is actually being leased or operated by another person or entity other than the owner thereof;

    4. Terminalling, Lease, or Storage Agreement(s) with the lessee-owner(s) of the contents of the respective tanks; and

    5. Notarized undertaking(s) executed jointly with the respective lessee-owner(s) of the content(s) of the storage tank(s) within the facility, depot or terminal containing the tank number, description of the product and the volume of inventory thereof as of the date of effectivity of these Regulations.

- All regulations, rulings or orders or portions thereof which are inconsistent with the provisions of these Regulations are hereby revoked, repealed or amended accordingly.

- These regulations shall take effect after 15 days following publication in the Official Gazette or in a newspaper of general circulation, whichever comes first. This was published in the Manila Times last 30 May 2022.

Banks and Other Financial Institutions

Amendments to the Rules on Cross-Border Transfer of Local and Foreign Currencies

Circular No. 1146 amends the Rules on Cross-Border Transfer of Local and Foreign Currencies which shall be incorporated as Section 4 of the MORFET.

Circular No.1146 Series of 2022 issued on 26 May 2022

Pursuant to the adoption of the amendment, any person importing or exporting local currency in excess of the prescribed amount in violation of the mandate of the BSP shall be subject to the penalties/sanctions under the FX Manual, as amended, New Central Bank Act (RA 11211), and other applicable laws and regulations.

The Amendment further provides that importation, or exportation of an amount in local currency in excess of the Php50,000.00 limit shall require the following:

1. Prior written authorization from the BSP; and

2. Declaration of the whole amount brought into or taken out of the Philippines using the prescribed Currencies Declaration Form in case of physical cross-border transfer of Philippine currency.

Suspension of Electronic Sabong (eSabong)

Memorandum No. M-2022-026 provides for the directives for all BSFIs with regard to the suspension of all operations of eSabong pursuant to the Memorandum issued by the Executive Secretary.

Memorandum No. M-2022-026 Series of 2022 issued on 24 May 2022

As a consequence of the suspension, all BSFIs are directed to refrain from facilitating eSabong transactions by implementing the following:

1. Delist eSabong entity/operators in the list of merchants accessible in the BSFIs application (i.e., mobile, internet, and so on);

2. Advise and issue a notification to the merchant/eSabong operator and the affected clients for the latter to cash out funds from their eSabong accounts to their e-wallet accounts within 30 calendar days from the issuance of the memorandum;

3. Disable the linkage of e-money wallet to eSabong account, including the merchant/eSabong account, in the system after the lapse of the 30-day transitory period.

In addition, the memorandum reminds all BSFIs to deal only with gambling and/or online gaming businesses that are authorized/licensed or registered with the appropriate government agency duly empowered by law or its charter to license/authorize entities or business to engage in such activities.

Lastly, BSFIs shall strictly observe customer due diligence, ongoing monitoring of accounts and transactions, reporting of suspicious transactions. It shall also ensure that appropriate control measures are in place to restrict access of minors, government employees, and other prohibited players on these online gambling facilities.

Updated Schedule for the Comprehensive Credit and Equity Exposures Report (COCREE)

Memorandum No. M-2022-027 encourages BSFIs to capitalize on the pilot test of the prescribed XML-COCREE reporting protocols and rules prior to its live implementation. It also provides for the updated schedule of the pilot test and live implementation of the COCREE as well as the extension of the pilot testing for those test records that fall anywhere within/between reporting periods 31 March 2022, and 30 June 2022.

Memorandum No. M-2022-027 Series of 2022 issued on 26 May 2022

Live implementation shall begin its reporting period on 30 June 2022 wherein a quarterly submission during the first 4 reporting quarters are required. This schedule will transition to a monthly submission which will begin on the 30 April 2023 reporting period. The schedule of report is illustrated as follows:

Covered BSFIs	Reporting Period	COCREE Submission Deadline
All Universal/ Commercial Banks (UKBs) and their Thrift Bank (TB)/Non-bank Financial Institution with Quasi-banking Functions (NBQB)/Trust Corporation subsidiaries, and Digital Banks	**Quarterly submission**	
	30 June 2022	16 September 2022
	30 September 2022	7 November 2022
	31 December 2022	6 February 2023
	31 March 2023	2 May 2023
	Monthly submission	
	30 April 2023 and onwards	15 banking days after end of reference month

Penalties for violations of the COCREE shall not be imposed during the pilot phase and grace period but these shall be strictly enforced beginning with the 31 July 2023 reporting period.

Prudential Relief on the Treatment of Loss Arising from the Sale/Transfer of Non-Performing Assets under Republic Act No. 11523, otherwise known as the Financial Institutions Strategic Transfer (FIST) Act

Memorandum No. M-2022-028 provides for the BSP-supervised financial institution's option to defer loss arising from the sale/transfer of NPAs under the FIST Act and its IRRs, up to a maximum period of five years from the date of sale/transfer, subject to prior approval of the BSP.

Memorandum No. M-2022-028 Series of 2022 issued on 6 June 2022

The Memorandum is divided into four parts namely: 1) Prudential Relief on the Treatment of Loss Arising from the Sale/Transfer of Non-Performing Assets Under the FIST Act; 2) Amendment to the Manual of Accounts in the Financial Reporting Package; 3) Compliance with the BSP Prudential Requirements; and 4) Transparency and Disclosure.

To determine the gain/loss on a **sale/transfer of NPAs to a Financial Institutions Strategic Transfer Corporation**, financial instruments that are received by a BSFI as consideration for the sale/transfer of NPAs shall be recorded in accordance with the provisions of Philippine Financial Reporting Standards (PFRS) 9, *Financial Instruments*.

Whenever the fair value of the financial instrument/s cannot be readily determined due to the absence of a quoted price, BSFI has the duty to provide basis for the fair valuation of the financial instrument/s which should be in accordance with the provisions of PFRS 13, *Fair Value Measurement*. This basis shall be supported by the opinion of a third-party external auditor and shall be made available to the appropriate supervising department of BSP upon request.

If the fair value of financial instrument/s received as consideration for the NPAs sold/transferred under the FIST Act cannot be established in accordance with these requirements, the BSFI shall record these financial instrument/s upon initial recognition at the net carrying amount of the NPAs sold/transferred less cash received. No gain or loss shall be recorded by the BSFI on the sale/transfer transaction.

On the other hand, a financial instrument that is received as consideration from **the sale/transfer of NPAs by a BSFI** shall likewise be measured in accordance with the provisions of PFRS 9, *Financial Instruments*. Thus, BSFIs are expected to be able to provide basis for valuation of financial instruments that are classified at fair value in accordance with PFRS 13, *Fair Value Measurement*.

The valuation of such financial instrument/s shall be supported by the opinion of a third-party auditor acceptable to the BSP, in the absence of a quoted price. Moreover, these financial instruments shall be impaired if these are classified at fair value through other comprehensive income or at amortized cost consistent with PFRS 9, Financial Instruments.

A BSFI that is allowed by the BSP to avail of the prudential relief measure under this Memorandum shall record the loss arising from the sale/transfer of non-performing assets that was deferred under the "Deferred Charges" account which should be written down uniformly over the period allowed by the BSP, starting from the date of sale/transfer transaction.

The amount of "Deferred Charges", net of write-down shall be booked as "Deferred Charges" under the "Other Assets" portion of the Financial Reporting Package (FRP) and other related prudential reports.

As to the Amendment to the Manual of Accounts in the Financial Reporting Package, "Deferred Charges" is now defined as:

24. Other Assets

    (a) Deferred Charges - This refers to the actual loss incurred on the sale/transfer of non-performing assets (NPAs) to Financial Institutions Strategic Transfer Corporations (FISTCs) under the "FIST Act", which should be written down up to a maximum period of five years in accordance with existing regulations.

As to the Compliance with the BSP Prudential Requirements, the BSFI as mentioned above, shall adopt the same in determining compliance with prudential requirements such as minimum capital requirements, risk-based capital adequacy ratio, and in computing adjusted net worth for purposes of complying with minimum prudential requirements such as the single borrower's limit, among other prudential requirements. It shall also reflect the staggered booking of the said loss in its other prudential reports e.g., Risk-Based Capital Adequacy Reports (CAR).

However, the amount of losses that were deferred, or in effect retained as part of capital, from the amount available for discretionary distribution of earnings, including dividends, share buybacks, profit remittance, and bonus payments shall be excluded.

Lastly, banks that are allowed to avail of the prudential relief measure under the FIST Act shall provide the following disclosures pursuant to the provisions of Section 175 of the Manual of Regulations for Banks (MORB):

1. The amount of Deferred Charges not yet written down as of the reporting period in the Published Balance Sheet;

2. In the Annual Report, the following information shall be disclosed; and

    - A description of the prudential relief measure under the FIST Act, including the financial year when the prudential relief measure is first applied and the duration of the application.

    - Impact on the financial statements: a) affected line items if the loss arising from the sale/transfer of NPAs was measured and recorded in accordance with PFRS (e.g., loss on sale of NPAs, deferred charges representing loss on sale/transfer of NPAs that has not yet been written down, total assets, profit or loss, earnings per share [for listed BSFIs], etc.), b) amount of loss on sale/transfer of NPAs recognized for the period, and c) balance of deferred charges.

3. Comparison of the a) risk-based capital adequacy ratios computed in accordance with the prudential life measure; and b) risk-based capital adequacy ratios had said prudential relief measure not been applied.

A BSFI that is allowed by the BSP to avail of the prudential relief may opt to use full PFRS 9, Financial Instruments, or PFRS 9, Financial Instruments, as modified by the application of the prudential relief measure in this BSP Memorandum, for the preparation of their audited financial statements, Provided, that in the case of the latter option, the BSFI shall comply with the provisions of the Securities and Exchange Commission Memorandum Circular No. 32 dated 17 November 2020.

Guidelines on Handling of Consumer Concerns on PESONet and InstaPay

Memorandum No. M-2022-029 serves as a reminder that pursuant to BSP Circular No. 980, series of 2017, all BSFIs are to adhere to the NRPS Framework which requires continued compliance with BSP rules and regulations, including, financial consumer protection.

Memorandum No. M-2022-029 Series of 2022 issued on 6 June 2022.

BSFIs participating in these automated clearing houses (ACHs) are required to strictly adhere to the principles under BSP's Financial Consumer Protection Framework. Thus, they are required to do the following:

- Establish effective mechanisms to ensure that all frontline personnel at the BSFI's offices (e.g., head office, branches, branch-lite units), including those that handle customer issues lodged thru various available channels, possess adequate, accurate and relevant information about PESONet and InstaPay to address consumer concerns and fund transfer issues, and to properly advise on redress mechanism and turn-around time for resolution of issues;

- Post materials containing pertinent information on redress mechanism of PESONet and InstaPay, including up-to-date contact information for consumer concerns specifically related to PESONet and InstaPay, on appropriate channels such as the BSFI's website and official social media pages; and

- Provide customer accessibility to a wide range of accessible contact channels for communication of consumer concerns, including but not limited to customer service hotlines, email, chatbot, and make available timely and adequate response to concerns sent via said channels.

The Philippine Payments Management, Inc. (PPMI), the accredited Payment System Management Body for retail payments, shall monitor and lead its members towards continued compliance with the NRPS framework and to ensure members' adherence to the applicable guidelines.

BSFIs are required to submit status of their compliance with this Memorandum to the PPMI. These shall be reported by the PPMI to the BSP Payment System Oversight Department (PSOD) on a semestral basis.

Prohibition of the Banco Rural de General Tinio (BRGT), Inc. from doing business in the Philippines

Circular Letter No. CL-2022-046 gives notice on the prohibition of BRGT, Inc. from doing business in the Philippines.

Circular Letter No. CL-2022-046 Series of 2022 issued on 9 June 2022

Pursuant to Sec. 30 of Republic Act No. 7653 or The New Central Bank Act, as amended, BRGT is prohibited from doing business in the Philippines. The Philippine Deposit Insurance Corporation has been designated as the receiver as well as to proceed takeover and liquidation of the said bank, as provided by the PDIC Charter, as amended.

AIA Investment Management and Trust Corporation Philippines – Establishment and Commencement of Operations

Circular Letter No. CL-2022-047 approves the request of Philam Asset Management Inc. to establish a trust corporation.

Circular Letter No. CL-2022-047 Series of 2022 issued on 10 June 2022

The trust corporation is called AIA Investment Management and Trust Corporation Philippines (AIAIM PH) and was registered with the Securities and Exchange Commission (SEC) on 1 December 2021.

The Certificate of Authority to Operate AIAIM PH was issued by the Bangko Sentral ng Pilipinas on 7 February 2022. It started its operations on 16 May 2022.

Bureau of Customs

Rules and Regulations Implementing Customs Administrative Order (CAO) No. 12-2019 on the Transshipment of Goods

CMO No. 15-2022 applies to all goods clearly indicated in the Transshipment Foreign Cargo Manifest as destined for foreign destination other than the Port of Discharge.

CMO No. 15-2022 dated 2 June 2022

- The CMO defines transshipment as the customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.
- Goods intended for transshipment shall not be subject to the payment of duties and taxes, provided, that the transshipment goods declaration particularly indicates such nature of goods, duly supported by commercial or transport documents or evidence as required by the Bureau of Customs (BOC).
- All entities, natural or juridical, engaged in the transshipment activities must apply for accreditation with the BOC as transhippers. This shall include cargo forwarders, consolidators, shipping lines, Air Express Cargo Operators (AECOs) and other similar entities engaged in transshipment operations.
- Request for the issuance of transshipment permit shall be made at the Office of the Deputy Collector for Operations or equivalent office of the port where the goods for transshipment were discharged. Until such time the BOC's computer system allows electronic lodgment of the transshipment goods declaration, the transshipment permit shall continue to be in use.
- Goods for transshipment shall remain unopened in the original packing containers under the original shipper's seal and shall not be inspected or examined at the port or airport of discharge, unless subject of derogatory information or there is a clear violation of existing laws, or upon the written request of the carrier's representative agent.
- The CMO laid down provisions governing direct transfer to vessels/aircraft, transshipment of bulk and break-bulk cargoes, in-transit transfer, transshipment of good via air, transshipment of goods covered by International Conventions and Agreements, transit of strategic goods and transshipment thereof under Republic Act (RA) No. 10697.
- In-transit transfers of goods in containers shall be equipped with the electronic customs seal under the Electronic Tracking of Containerized Cargo (E-TRACC) System.
- Goods intended for transshipment must be loaded in the exporting means of transport within 30 calendar days from the date of arrival. The exportation commences when the carrying vessel or aircraft leaves the Philippine territory.
- This CMO introduces transshipment operations at hub facilities operated by AECOs which shall be dedicated to the sorting and distributing of shipments from points across the world that are then physically transferred to a connecting transportation mode.
- The Chief, Piers Inspection Division/Aircraft Operations Division/equivalent unit is directed to submit a report to the Deputy Collector for Operations of the Port of Discharge of all goods for transshipment which are still in the ports 30 days after their date of discharge from the carrying vessel or aircraft or 5 days after their receipt at the hub facilities in case of express shipments.

- Finally, the CMO provides for the supervision fees that shall be collected for all transshipment goods and schedule of penalties for (a) Unloading of goods for transshipment before arrival at port of entry; (b) Unloading of goods for transshipment at improper time and place after arrival; (c) Failure to supply advance and requisite manifest; (d) Disappearance of manifested goods for transshipment; and (e) False statement of port of final destination of transshipment of goods.

Full Implementation of the CBW-Automated Inventory System (AIMS)

AOCG Memorandum No. 199-2022 pertains to the full implementation of CBW AIMS pursuant to CMO No. 20-2021.

AOCG Memorandum No. 199-2022 dated 10 June 2022

- It directs all Collection Districts and offices concerned to ensure that all CBWs and accredited members of Customs Common Bonded Warehouses (CCBWs) have registered in the AIMS and submitted all the necessary data as provided for in Section 4.2.3 and Section 4.3 of the above cited CMO.
- The order provides for schedule of activities for strict compliance by the concerned person/office which shall be monitored by the Deputy Collector for Operations in order to effectively implement the Go Live AIMS.
- A Show Cause Order shall be issued to the concerned CBW for non-registration and non-filing of the live AIMS declaration enumerated by this Order.
- Customs examiners and appraisers will only process the Warehousing Goods Declaration lodged in the Electronic to Mobile (E2M) System and only if said declarations adhere to the provided E2M Model of Declaration provided by the Order to be accepted in AIMS.

Board of Investment

Areas that are contiguous and adjacent to the National Capital Region (NCR)

BOI Memorandum Circular No. 2022-002 approves the list of cities and municipalities considered contiguous and adjacent to the NCR.

BOI Memorandum Circular No. 2022-002 dated 27 May 2022

In line with Section 296 of the CREATE Act, which provides that the period of availment of incentives will be based on the location of the registered project and industry priorities as determined in the Strategic Investment Priority Plan (SIPP), the BOI issued MC No. 2022-002 approving the list of cities and municipalities as the areas that are contiguous and adjacent to the NCR, based on the overall score of the cities and municipalities on the Cities and Municipalities Competitive Index (CMCI) with the expanded coverage of Laguna as follows:

Bulacan	Cavite	Laguna	Rizal
Meycauyan City San Jose Del Monte City	Bacoor Dasmarinas Imus	Biñan Cabuyao Calamba San Pedro Santa Rosa	Antipolo Cainta Taytay

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

(Editor's note: This was published in The Philippine Star *last 3 June 2022)*

BOI Memorandum Circular No. 2022-003 amends the SIPP.

Amendments to the Specific Guidelines of Activities in support of Exporters under the 2020 Investment Priorities Plan

BOI Memorandum Circular No. 2022-003 dated 1 June 2022

In order to effectively carry out the intent and purpose of the CREATE Act, and its Implementing Rules and Regulations (IRR), the BOI issued MC No. 2022-003 approving the following:

Amendments on the Specific Guidelines of Export Activities under the 2020 IPP also known as the transitional SIPP:

II. EXPORT ACTIVITIES

XXX

3. Activities in Support of Exporters

XXX

e. Logistics Services

This covers logistics integrated services which must involve warehousing, inventory management and transport of goods. Mere trucking or forwarding services are excluded.

f. Development and Operation of Economic Zones; and industrial parks and Buildings for Exporters

This covers the development and operation of economic zones, and industrial parks within export or freeport zones with integrated facilities for export-oriented enterprises. Economic zones and industrial parks shall have infrastructure such as paved roads, power system, water supply, drainage system, sewerage treatment facilities, pollution control systems, communication facilities, and other infrastructure/facilities needed for the operation of exporters located therein.

This also covers the development and management of new buildings located outside NCR, declared as an economic zone or within export or freeport zones, with a minimum contiguous land area of 10,000 square meters with the following features:

- High-speed fiber-optic telecommunication backbone and high-speed international gateway facility or wide-area network (WAN); or any high-speed data telecommunication system that may become available in the future;
- Clean , uninterruptible power supply;
- Computer security and building monitoring and maintenance systems (e.g., computer firewalls, encryption technology, fluctuation controls, etc.); and
- Any other requirements as may be determined by the Board of the concerned IPAs.

At least 70% of the leasable/saleable areas shall be dedicated to exporters.

Revenues arising from clients/tenants engaged in activities that are not allowed pursuant to the definition of a registered business enterprise under Section 293(M) of the CREATE Act will not be entitled to the ITH incentive.

Phased development of an economic zone or industrial park may be allowed provided that the whole project is completed within five years unless otherwise approved by the Board of the concerned IPA.

These amendments shall apply to all projects qualified under CREATE Act.

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

(Editor's Note: This was published in The Philippine Star *last 8 June 8 2022)*

Policy on the Liberalization of the Certification Based on Internationally-recognized Standards Requirement for Energy Projects

BOI Memorandum Circular No. 2022-004 dated 2 June 2022

BOI Memorandum Circular No. 2022-004 removes the requirement imposed on projects to obtain ISO certification.

To effectively carry out the intent and purposes of Executive Order (EO) No. 226, as amended, and to maintain the brand and image of enterprises registered with the BOI, the BOI issued MC No. 2022-004 resolving as follows:

"That as a matter of policy, the requirement to *"obtain applicable certifications based on internationally-recognized standards such as ISO certificate or other similar certifications"* be liberalized and that it shall no longer be applied to BOI-registered energy projects regardless of date of registration; Provided, that the corresponding Certificates of Compliance from the Energy Regulatory Commission is duly issued consistent with the various operating procedures that an energy project is obliged to comply with pursuant to Sections 1 and 4(b), Rule 5 of the Implementing Rules and Regulations of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001." (Underscoring supplied)

This Circular shall take effect after 15 days following its publication in a newspaper of general circulation.

(Editor's Note: This was published in The Philippine Star *last 15 June 2022)*

PEZA

Guidelines on the Filing of Applications for Letters of Authority with the Enterprise Registration Division (ERD)

PEZA Memorandum Circular No. 2022-034 dated 30 May 2022

PEZA Memorandum Circular No. 2022-034 revises the process of filing applications for LOAs.

Below are the salient provisions of the revised process for filing of applications for LOAs under the ERD, including applications for cancellation of PEZA registration:

- The Registered Business Enterprise (RBE)/applicant shall use the pro forma application letters depending on the type of LOA, which may be downloaded from the ***PEZA website under Resources – Downloads – ER LOAs – Pro forma Applications***.

  The RBE shall fill out the required information of the application, including the contact details of the authorized representative of the RBE and prepare the documents listed in the pro forma application letter.

- The RBE/applicant shall send through email the LOA application and documentary requirements to loa.erd@peza.gov.ph, copy furnished the Office of the Director General at odgcbp@peza.gov.ph in the prescribed email format.

- PEZA shall not accept applications with incomplete requirements and discrepancies since the applications are in ready format provided by PEZA.

  An Enterprise Services Officer (ESO) of the ERD shall be assigned to conduct preliminary assessment / pre-screening of the applications.

  In case of complete application, the RBE shall receive a **Confirmation Message** from ERD together with a notice to the ODG for the assignment of a unique reference number (DTS No.). **The confirmation message shall now include the date the LOA will be released**. Note that under the Citizens' Charter of the ERD, the applications shall be processed within 20 working days.

  If the documentary requirements are incomplete, the RBE shall receive a message enumerating the list of lacking documents or details in its application. The RBE needs to re-submit/re-file the entire application and documentary requirements.

- The ODG shall then assign a DTS Reference No. to all complete applications. The RBE shall receive a **Formal Acceptance message**.

- The application shall now be assigned to an evaluator who will process the application and notify the RBE/applicant should there be additional information or clarification during the course of the evaluation, if any, which will be sent through email within three working days.

  Failure by the RBE/applicant to reply within three working days shall result in the forfeiture of the application without prejudice to the RBE/applicant to file anew.

- Once the application is approved or denied, the RBE/applicant shall receive a **Notice of Approval and Release of LOA** or a **Notice of Denial**.

This Circular shall take effect on 6 June 2022.

SEC Filing, Payments and Other Deadlines

SEC Memorandum Circulars

SEC Memorandum Circular No. 6 extends the deadline for auditing firms to transition from sole practitioner to partnership.

SEC Memorandum Circular No. 6, Series of 2022 dated 9 June 2022

The SEC extended the deadline for auditing firms to transition from sole practitioner to partnership, and comply with the two (2) – partner requirement under Paragraphs 5.C and 5.D of Part III of the Revised SRC Rule 68 from 30 June 2022 to 30 June 2026.

(Editor's Note: This was published in the Philippine Daily Inquirer *and the* Philippine Star *on 15 June 2022)*

Other SEC Updates

SEC-OGC Opinion No. 22-07 dated 26 May 2022 provides that while Section 22 of the Revised Corporation Code (RCC) no longer requires that a majority of directors and trustees be residents of the Philippines, Section 46(f) of the RCC allows a corporation to include such a requirement in its By-Laws. The amended By-Laws shall only be effective upon the issuance by the Commission of a certification that the same is in accordance with the RCC.

SEC-OGC Opinion No. 22-08 dated 30 May 2022 provides that the purpose clause of a corporation can be reasonably "stretched" as to impliedly cover new and unexpected situations in the conduct of its business. But in those cases where it cannot, a proper amendment would be necessary.

Case Digests

Supreme Court

Republic of the Philippines, represented by the Bureau of Internal Revenue, vs. First Gas Power Corporation, Supreme Court (First Division) G.R. No. 214933, promulgated 15 February 2022

The date of notarization cannot be regarded as the date of acceptance for the same refers to different aspects, as the notary public is distinct from the Commissioner of the BIR who is authorized by law to accept Waivers.

Facts:

The Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) to First Gas Power Corporation ("First Gas") assessing it of deficiency taxes and penalties for the taxable year 2000. First Gas filed its Preliminary Reply to the PAN and later received Final Assessment Notices (FAN) and Formal Letters of Demand. First Gas filed a Petition for Review with the Court of Tax Appeals (CTA) upon the denial of its Protest Letters.

The CTA ruled in favor of First Gas, on the ground that the period to assess respondent for deficiency income tax for taxable year 2000 has already prescribed because the Waivers issued to extend the period to assess were not valid, finding the dates of acceptance by the BIR were not indicated in the Waivers. Thus, the FAN and the Formal Letter of Demand are invalid because they were issued beyond the three-year prescriptive period.

Issue:

Are the waivers issued by the taxpayer valid even if the dates of acceptance by the BIR are not indicated?

Ruling:

No, the waivers are invalid since the dates of acceptance by the BIR were not indicated in the waiver. Since the waivers are invalid, the period to assess for deficiency income tax for taxable year 2000 has already prescribed, making the FAN and Formal Letters of Demand invalid. The Court emphasized the requirement for the validity of the waiver that "the CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver" and that "the date of such acceptance by the BIR should be indicated."

The BIR cannot argue that the date of the notarization should be presumed as the date of acceptance. The CTA correctly observed that the date of notarization cannot be regarded as the date of acceptance for the same refers to different aspects, as the notary public is distinct from the Commissioner of the BIR who is authorized by law to accept Waivers of the Statute of Limitations.

Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development Inc., Supreme Court (First Division) G.R. No. 258947, promulgated on March 29, 2022

The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in instances of fraudulent returns or failure to file a return.

The FDDA cannot serve as a mode for the collection of deficiency taxes.

Facts:

The Bureau of Internal Revenue (BIR) issued a Formal Letter of Demand/Final assessment Notice (FLD/FAN) to QL Development Inc. (QLDI) assessing it for deficiency taxes for taxable year 2010. QLDI failed to file a protest, which then resulted in the issuance of a FDDA, which QLDI received on 3 March 2015. QLDI filed a motion for reconsideration dated 30 March 2015 which was denied by the Commissioner of Internal Revenue (CIR) on 4 February 2020, or almost 5 years later.

QLDI elevated the case to the Court of Tax Appeals (CTA) where it was ruled that the period within which the CIR may collect deficiency taxes had already lapsed. The CTA ruled that when an assessment is timely issued, the CIR has five years to collect the assessed tax, reckoned from the date the assessment notice had been released, mailed, or sent by the BIR to the taxpayer. Thus, in this case, the CIR had five years from 12 December 2014, or until 12 December 2019, to collect the deficiency taxes. However, the CIR issued the BIR letters for the collection of taxes on various dates in 2020, which were all beyond 12 December 2019.

Issues:

1. What is the applicable prescriptive period for the collection of taxes?
2. Does the FDDA operate as a form of collection of deficiency taxes?

Ruling:

1. The 3-year prescriptive period applies in this case, and thus, the BIR's right to collect has prescribed.

   While the CIR 's right to collect taxes had prescribed, it is the 3-year, and not the 5-year period which applies to this case. The Supreme Court held in previous cases that for assessments that are issued within the 3-year prescriptive period, the CIR has another three years within which to collect taxes. Hence, the CTA erred when it applied the 5-year period to collect taxes. The 5-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return.

   In this case, since the FAN/FLD was mailed on 12 December 2014, the CIR had another three years reckoned from said date, or until 12 December 2017, to enforce collection of the assessed deficiency taxes. Prescription had already set in when the CIR initiated its collection efforts only in 2020.

   Even the 5-year prescriptive period were to apply, the BIR's right to collect would still have been barred by prescription since the last date due would have been on 12 December 2019.

2. No, the FDDA does not operate as a form of collection of deficiency taxes.

   The CIR's collection efforts are initiated by distraint, levy, or court proceeding. The distraint and levy proceedings are validly begun or commenced from the issuance of a warrant of distraint and levy and service against the taxpayer or a proper judicial proceeding is initiated. However, in this case, no warrant of distraint or levy was served on QLDI and no judicial proceedings were initiated by the CIR within the prescriptive period to collect.

Court of Tax Appeals

Commissioner of Internal Revenue vs. Air Globe Inc.
CTA EB No. 2348 (CTA Case No. 9466) promulgated 23 May2022

Mere use of a different header or denomination or nomenclature in lieu of the typical LOA does not negate the nature of the former that so long as the contents are similar and likewise issued by the official duly authorized to issue LOAs pursuant to existing laws.

Facts:

Company A received a LOA authorizing revenue officers to examine its books for tax period 2007. Thereafter a Revalidation/Reassignment notice dated 6 May 2009, was issued authorizing a different set of Revenue Officers to conduct and continue the audit.

Thereafter, a PAN was issued on 29 December 2010, and was served upon Company A on 30 December 2010. A FAN was thereafter issued and received by Company A on 14 January 2011, stating the deficiency income tax (IT), Value-Added Tax (VAT), Expanded withholding tax (EWT) and withholding tax on compensation (WTC) for taxable year (TY) 2007.

Issue:

1. Whether the subject deficiency tax assessments are valid when the revalidation/reassignment notice was issued as opposed to a Letter of Authority

2. Whether Company A's right to due process was violated

Ruling:

1. Yes. A revalidation or reassignment notice containing the same information as in a letter of authority may be considered as a functional equivalent of the latter.

   In this case, a closer scrutiny of the Revalidation/Reassignment Notice yields that its contents are similar to the contents of an LOA:

   a. Both documents were particularly addressed to Company A;
   b. Both documents specifically named the Revenue Officers authorized to examine the books of accounts and accounting records;
   c. Both documents stated that the taxes covered by the examination are Company A's all internal revenues taxes; and
   d. Both documents were signed by the Regional Director, who is duly authorized to issue LOAs under Section 10(c) of the Tax Code, as amended.

   Mere use of a different header or denomination or nomenclature in lieu of the typical LOA does not negate the nature of the former that so long as the contents are similar and likewise issued by the official duly authorized to issue LOAs.

What is proscribed is the practice of substituting the RO named in the LOA with new ROs who do not have a separate LOA issued in their name or merely by virtue of a MOA, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of ROs which is signed by mere revenue district officer or other subordinate official, and not by the Commissioner of Internal Revenue or his duly authorized representative under Section 6(c), 10(c) and 13 of the Tax Code, as amended.

2. Yes. The FAN was issued without waiting for the lapse of the 15-day period for Company A to file a reply to the PAN.

   A number of Supreme Court cases have categorically ruled that the 15-day period to reply to a PAN forms part of the taxpayer's right to due process.

   The subject PAN was served on December 30, 2010, thus Company A had 15 days or until 14 January 2011 within which to reply. However, on the last day it was supposed to reply to the PAN or on 14 January 2011, the FAN was immediately issued. Since the BIR did not wait for the 15-day period to lapse for Company A to file its reply to the PAN (before issuing the FAN), Company A was deprived of the opportunity to contest the PAN. Resultantly, its right to due process was violated. This is the case notwithstanding the fact that the taxpayer was able to file a protest to the FAN as this does not denigrate the fact that Company A was deprived of statutory and procedural due process to contest the assessment before it was issued.

Commissioner of Internal Revenue vs. OIC Construction & Development Corporation
CTA EB No. 2394 (CTA Case no. 8851) promulgated 31 May 2022

Governmental principles such as the doctrine of (1) non-applicability of estoppel on the government, (2) presumption of regularity in the service, and (3) liberal applicability of procedural rules do not apply when it violates 228 of the Tax Code, as amended, and Revenue Regulation No. 12-99, as amended.

Facts:

Sometime on 2 February 2010, a LOA authorizing the Revenue Examiners to examine Company O's book of accounts and other accounting records for the TY 2008 was issued by Revenue Region (RR) No. 6. Company O's address in the LOA is Malate, Manila, under RDO No. 33 and RR No. 6-Manila.

On 14 March 2011, Company O filed an application for registration with RDO No. 41, under RR No.7. A BIR Certificate of Registration was then issued indicating the Mandaluyong address with notation "TRANSFERRED FROM RDO 033."

Preliminary Assessment Notice (PAN) and Final Letter of Demand (FLD) were issued by RDO No. 33. All these notices indicate Company O's address at Manila. Company O then received on 12 October 2012, a Preliminary Collection Letter (PCL) which they contested. The examiner of RDO No. 33 wrote a letter stating that Company O's delinquent case is final and executory. However, so as not to jeopardize the interest of the government to collect taxes, the case was forwarded to RDO No. 41 by virtue of a MOA.

On 14 July 2014, RR No. 7 served the Warrant of Distraint and/or Levy (WDL). In response to the WDL, Company O filed a Petition for Review (With Motion for the Suspension of Collection of Tax) with the CTA in Division.

On 29 May 2020, the CTA in Division ruled in favor of Company O. Dissatisfied with the CTA in Division's decision, BIR filed on 21 October 2022 (4 months after the receipt) a Motion to Admit Attached Motion for Reconsideration and Motion for Reconsideration of Decision Dated 29 May 2020. CTA in Division denied the motion, thus, the instant Petition for Review before the CTA *En Banc*.

Issue:

Whether the assessment issued against Company O is valid?

Ruling:

No.

Company O alleges it did not receive any prior assessment notices i.e., the PAN, FLD, and FAN. While the BIR claimed that the preceding documents were sandwiched between the LOA and PCL which Company O does not deny receiving, the BIR is wrong in its logic because receipt of LOA and PCL does not automatically mean that the PAN, FLD, and FAN were likewise received. While there exists a presumption of regularity in the performance of official duty, said presumption cannot stand in the face of positive evidence of irregularity or failure to perform a duty. Considering there was no substantial compliance with the due process requirements under Section 228 of the Tax Code, as amended, and Revenue Regulation No. 12-99, as amended, the presumption of regularity in the performance of official duties will not apply.

It is a conclusively established principle in law and jurisprudence that any assessment issued in violation of Section 228 of the Tax Code, as amended, and Revenue Regulation No. 12-99, as amended, is void. Failure to afford a taxpayer due process during an assessment is not the error contemplated in Supreme Court decisions where the application of the principle is warranted.

Premier Central, Inc. vs. Commissioner of Internal Revenue
CTA Case No. 10251 promulgated 16 May 2022

It was erroneous and illegal for the BIR to require a taxpayer to withhold and remit creditable withholding tax at the rate of 6% based on the purchase price of a property located in the TIEZA since it is exempt from income tax. Thus, the claimed amount constitutes erroneously or illegally withheld and remitted creditable withholding tax, interest, surcharge and compromise penalty, which is refundable under Sections 205 and 229 of the Tax Code, as amended.

Facts:

On 17 December 2014, the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) conducted a public bidding of the Hilaga Property situated in San Jose, San Fernando City, Pampanga and other properties listed in 2014 Terms of Reference for Interested Bidders.

In its Resolution No. R-06-03-15 dated 6 March 2015, the Board of Directors of TIEZA declared Company A as the winning bidder for the Hilaga Property. Company A paid TIEZA the winning bid of Php 939,656,848, net of value-added tax and subsequently, the latter executed a Deed of Absolute Sale dated 4 May 2015.

On 5 June 2015, Company A paid the documentary stamp tax due on its purchase of the Hilaga Property amounting to Php 14,094,855.00. Using as basis the provision of Section 74 of RA No. 9593 which exempts TEIZA from payment of corporate income tax, Company A did not subject to creditable withholding tax its income payment to the former.

When Company A applied for the issuance of the Certificates Authorizing Registration (CARs), the BIR directed Company A to withhold and remit the creditable withholding tax equivalent to 6% of the Php 939,656,848.00 purchase price or a total basic creditable withholding tax of Php 56,379,410.88, plus interest, surcharge and compromise penalty.

On 31 January 2018 and 16 March 2018, following the instruction from the BIR, and to avoid undue delay in the issuance of the CARs and transfer of title over the property, Company A remitted in two (2) tranches a total amount of Php 100,439,805.47 basic tax inclusive of interest and compromise penalty. After such payment, Company A was issued the corresponding CARs and consequently, with Transfer Certificates of Title under its name.

On 2 July 2019, Company A filed an administrative claim for refund of the Php 100,439,805.47 with BIR Revenue District Office No. 21B, claiming that the collection of the said amount was erroneous and illegal.

The two-year prescriptive period was about to lapse, however, the Commissioner of Internal Revenue has yet to issue any decision on the administrative claim for refund filed by Company A. Hence, on 30 January 2020, Company filed a Petition for Review with the CTA.

The Commissioner of Internal Revenue argues that Company A failed to comply with the requirements for refund of creditable withholding tax. It further argued that Company A is not exempt from payment of withholding tax under Section 74 of R.A. No. 9593 and that claims for refund are construed strictly against the taxpayer and in favor of the government.

Issue:

Is Company A entitled to the refund of 47 creditable withholding tax, interest, surcharge and compromise penalty, erroneously assessed and collected by the BIR?

Ruling:

Yes. Company A is entitled for the refund of creditable withholding tax, interest, surcharge and compromise penalty it paid to the BIR.

Section 74 of RA No. 9593 and Section 67 of its implementing rules and regulations (IRR) provides that TIEZA shall be exempt from payment of corporate income tax notwithstanding any provision of existing laws, decrees or executive orders which states otherwise. This exemption applies whether the income earned by the entity was derived from governmental or proprietary activities.

Considering that TIEZA is exempt from income tax, Company A is not obliged to withhold creditable withholding tax on the purchase of the Hilaga Property. It was erroneous and illegal therefore for the BIR to have required Company A to withhold and remit creditable withholding tax plus interest, surcharge and compromise penalty. The claimed amount of Php 100,439,805.47 is refundable under Sections 204 and 229 of the Tax Code, as amended.

Trans-Asia Renewable Energy Corporation vs. Commissioner of Internal Revenue and Commissioner of Internal Revenue vs. Trans-Asia Renewable Energy Corporation
CTA E.B. Nos. 2314 and 2347 (CTA Case No. 9516) promulgated 17 May 2022

Facts:

Company T is registered with the Department of Energy (DOE) as a "RE Developer of Wind Energy Resources" and with the BOI as a "New Renewable Energy Developer of a MW San Lorenzo Wind Farm Energy Power Project

On 15 August 2016, Company T filed with the CIR its Letter-Request, Application for Tax Credits/Refunds for the refund of its alleged excess and unutilized input VAT attributable to its zero-rated sales for the period 1 July 2014, to 30 June 2015.

On 19 December 2016, Company T received the Letter denying Company T's administrative claim for refund for lack of factual basis.

Under the RA 9136 or the EPIRA, a generation company must secure a COC before its sale of power or fuel generated from renewable energy sources can qualify for VAT zero-rating.

In the situation involving taxpayers having both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

On 11 January 2017, Company T filed its prior Petition for Review before the Court in Division to appeal the denial of its administrative claim.

On 3 January 2020, Company T's Petition for Review was partially granted. Both unsatisfied with the Court in Divisions' rulings, Company T and the CIR filed their respective Petitions for Review before the Court *En Banc*.

On 23 February 2021, the Court *En Banc* submitted these consolidated cases for decision.

Issue:

a. Was Company T entitled to the entire claim for refund of its alleged excess input VAT?
b. Did the Court in Division err in ruling that Company T is intitled to a partial claim for refund its alleged excess input VAT?

Ruling:

a. No

   Only upon the issuance of the prerequisite COC that a generation company, may be regarded as authorized by the ERC to operate a generation facility, and thus, entitled to VAT zero-rating of its sale of power or electricity. A COC is not simply confirmatory of the status of Company T as a generation company, nor a mere procedural requirement imposed by the EPIRA and its IRR. It is a prerequisite before one can be considered as a generation company entitled to tax incentives.

   In the case of Commissioner of Internal Revenue vs. Toledo Power Company, the Supreme Court ruled that the latter was not a generation company until when the ERC issued a COC in its favor.

   In the present case, Company T was able to prove that it is a generation company armed with the requisite COC conferred by ERC on 1 June 2015.

   Accordingly, Company T's sale of power generated from renewable energy sources like wind has qualified for VAT zero-rating under the EPIRA but only starting 1 June 2015, when the ERC issued a COC in its favor.

b. No

   The Court addressed that there is nothing in the Section 112(A) of the NIRC of 1997, as amended, which requires that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. The law merely states that the creditable input VAT should be attributable to zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" strictly relates to a situation involving taxpayers having both zero-rated or effectively zero-rated sale as well as taxable or exempt sale of goods, properties or services and the creditable input VAT cannot be directly attributed to any of such transactions. In such cases, the input taxes shall be allocated proportionately on the basis of the volume of sales.

   Furthermore, the CIR's reliance on Commissioner of Internal Revenue vs. Coral Bay Nickel Corporation is inaccurate. There is nothing in the said decision that states or implies that only those attributable to Coral Bay's zero-rated sales are allowed as valid input VAT.

From the foregoing, the Court find the CIR's assertions bereft of merit. Thus, the Court in Division did not err in partially granting Company T's claim for refund or issuance of TCC.

Ayala Corporation vs. Commissioner of Internal Revenue
CTA EB Case No. 2417 promulgated 18 May 2022

This decision was however subsequently clarified by the Supreme Court in another case, wherein it held that an amended decision referred to in Asiatrust refers to a decision which is based on a reevaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision. This differs from an amended decision which is a mere clarification, which does not need a motion for reconsideration or new trial before filing a petition for review with the CTA *En Banc*.

The Supreme Court held that if an amended decision was issued by the CTA in Division, a litigant planning to file an appeal with the CTA *En Banc* must necessarily file a motion for reconsideration or new trial first, even though one or both litigants already filed a motion for reconsideration to the original decision.

Facts:

On 1 April 2015, Ayala Corporation filed its Annual Income Tax Return for CY 2014 through the Electronic Filing and Payment System (EFPS) showing an overpayment of income tax due amounting to Php 78,261,625.00. On 14 March 2017, Ayala Corporation then filed an administrative claim for the issuance of a Tax Credit Certificate for its unutilized Creditable Withholding Tax for CY 2014 in the total amount of Php 62,660,776.00. On 29 March 2017, Ayala Corporation filed a Petition for Review before the Second Division of the CTA.

On 26 February 2020, the Second Division of the CTA ordered the issuance of a Tax Credit Certificate in favor of Ayala Corporation in the amount of Php 44,691,731.64. On 16 March 2020 Ayala Corporation filed a Motion for Partial Reconsideration, while on 29 June 2020, the Commissioner of Internal Revenue also filed a Motion for Partial Reconsideration. On 11 January 2021, the Second Division of the CTA Amended its Decision, wherein it ordered the issuance of a Tax Credit Certificate in favor of Ayala Corporation in the amount of Php 45,316,630.39.

On 11 February 2021, both the Ayala Corporation and the Commissioner of Internal Revenue filed their respective Petitions for Review before the CTA *En Banc*. On 15 February 2021, the CTA *En Banc* issued a Minute Resolution consolidating both cases.

Issue:

Did the CTA *En Banc* acquire jurisdiction over the Petitions for Review filed by the parties?

Ruling:

No. Section 1, Rule 8 of the Revised Rules of the CTA (RRCTA) requires the filing of a timely motion for reconsideration or new trial with the CTA in Division that issued the assailed decision or resolution, before the CTA *En Banc* can take cognizance of an appeal via a petition for review. In *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held that for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. This is true even in the case of an amended decision. As explained by the Supreme Court in CE *Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

The Supreme Court however clarified the principle laid down in *Asiatrust in Commissioner of Internal Revenue vs. Commission on Elections*, wherein it decreed that only a "new or different" amended decision necessitates the filing of a motion for reconsideration or new trial. An amended decision referred to in *Asiatrust* refers to a decision which is based on a reevaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision. This differs from an amended decision which is a mere clarification, one which does not need a motion for reconsideration or new trial before filing a petition for review with the CTA *En Banc*.

The conclusions in the assailed Amended Decision were arrived at by the CTA a quo by (a) re-evaluating Ayala Corporation's arguments on its substantiation of prior year's excess tax credit and (b) re-examining some of Ayala Corporation's Certificates of Creditable Tax Withheld at Source which were disallowed as a result. Therefore, the Assailed Amended Decision is an amended decision as defined in *Commissioner of Internal Revenue vs. COMELEC*. Thus, a motion for reconsideration of the amended decision should have been filed by both parties before lodging an appeal before the CTA *En Banc*.

Since both Ayala Corporation and the Commissioner of Internal Revenue failed to comply with this procedural requirement, the CTA *En Banc* cannot validly acquire jurisdiction over their appeals. Accordingly, the Assailed Amended Decision has already attained finality, and can no longer be questioned by the parties.

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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.

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.