Tax Bulletin

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BIR Administrative Requirements

RMO No. 7-2023 provides for the policies, guidelines and procedures in the processing and monitoring of ONETT and issuance of eCAR thru the eONETT System.

RMO No. 7-2023 dated 23 February 2023

- The eONETT System is a web-based application that will enable the taxpayer to transact their ONETT online provided there is an internet connection. This provides a systematic solution to facilitate the online processing, approval, generation of eCAR, and its transmission to the Land Registration Authority.

- The RMO is issued to:

    1. Provide uniform guidelines and procedures in the handling of the ONETT filed through the eONETT System;

    2. Define the duties and responsibilities of the identified revenue officials and personnel on the use of the system; and

    3. Prescribe the reporting requirements for the effective monitoring of ONETT applications and related transactions.

- The facilities of the eONETT shall be used in the processing, review and approval of online applications, as well as generation and printing/issuance of eCAR.

- The RMO likewise mentions that the updated schedule of zonal valuation shall be provided by the Assessment Performance Monitoring Division (APMD) to Taxpayer Service Systems Divisions (TSSD) every time there is a revision.

- Assignment of online applications received for the day shall be manually done by the Group Supervisor to the ONETT Revenue Officer on duty.

- Validation/verification of the TIN and other pertinent registration information provided by the taxpayers shall be done thru the Internal Revenue Integrated System-Taxpayer Registration System (IRIS-TRS).

- Only those applications with complete documentary requirements shall be processed.

- This RMO also provides for the guidelines in case the application was submitted for review by the RDO/ARDO/CAS or in cases wherein the application was returned to the handling RO/GS due to errors or correction, for compliance of taxpayers, and for cases where the application is to be assigned to another RO/GS.

- In case of lost eCAR thru the eONETT System within the validity period, the concerned RDO shall reprint and issued the same to the requesting taxpayer.

- This RMO also provides for the procedures to be performed by the RO/GS, CAS, Assistant Division Chief, Division Chief of the Large Taxpayers Service (LTS) in the processing, approval of applications and issuance of eCAR, including the reprinting of erroneous/ invalid eCAR and re-issuance of expired eCAR through the eONETT system.

RMC No. 21-2023 prescribes the clarification and guidance on Section 5 of RR No. 18-2021 on the posting of export bond prior to removal of tobacco products, heated tobacco products and vapor products for export from place of manufacture.

RMC No. 21-2023 dated 27 January 2023

- As a general rule, all removals of excisable articles from the place of production are subject to excise tax. However, the Tax Code provides exemptions for certain persons/entities, including exporters of goods otherwise subject to excise tax if sold domestically. As a matter of policy, the BIR does not grant outright tax exemption on removals of excisable articles intended for exports to avoid possible abuses by manufacturers/exporters.

- With the issuance of RR No. 3-2008 dated 22 January 2008, the BIR provided two remedies to taxpayers after payment of excise tax due on every removal of excisable article intended for export or sale/delivery to international carriers or tax-exempt entities/agencies:

    1. Claim for excise tax credit/refund

    2. Product replenishment

- This circular is issued to clarify the provisions pertaining to the posting of an export bond as an option available to manufacturers/exporters intending to export their tobacco products, heated tobacco products, and vapor products prior to removal from the place of manufacture in relation to the provisions for a claim for product replenishment under RR No. 3-2008.

- Manufacturers/exporters of tobacco products, heated tobacco products, and vapor products intended for export may opt to either:

    1. Utilize their existing balance of excise tax credits, if any, under the Product Replenishment Scheme; or

    2. Post an export bond equivalent to the amount of the excise tax due on their products if sold domestically, prior to the removal of their excisable products intended for export.

- The option of posting for an export bond may be availed of by the manufacturers/exporters, subject to the following conditions:

    1. In no case shall they avail of the two options (i.e., product replenishment and export bond) at the same time to cover the excise tax due for the shipment;

    2. The amount of the export bond shall be equivalent to, at a minimum, the applicable excise taxes due on the two immediately preceding shipments; and

    3. The concerned manufacturers/exporters shall file and submit the export bond to the Excise Large Taxpayers Regulatory Division of the BIR and copy-furnish the Chief, Excise Large Taxpayers Field Operations Division.

RMC No. 23-2023 amends the provisions of RMC No. 48-2018 on the classification of ONETT and its corresponding processing time for the issuance of OCS and eCAR, in order to align with the Citizen's Charter 2023 Edition, to wit:

RMC No. 23-2023 dated 17 February 2023

ONETT Transactions	Classification	Total Processing Time per BIR Citizen's Charter 2023 Edition
Sale of Real Property / Shares of Stocks Processing and Issuance		
1. OCS	Complex	7 working days
2. eCAR	Complex	7 working days
Donation of Properties Processing and Issuance		
1. OCS	Complex	7 working days
2. eCAR	Complex	7 working days
Estate of the Decedent Processing and Issuance		
1. OCS	Highly Technical	20 working days
2. eCAR	Complex	7 working days

The total processing time specified above is computed on a per application basis. The procedures in the issuance of OCS and eCAR stated in the Citizen's Charter 2023 Edition shall still be followed.

RMC No. 24-2023 provides further clarifications on the qualifications of an ELSE to the incentives of VAT-zero rate on local purchases of goods and services exclusively and directly used in the registered project or activity.

RMC No. 24-2023 dated 17 February 2023

- Among the salient clarifications of the RMC are summarized below:

Question	Clarification
Q1 What is an Ecozone Logistics Service Enterprise (ELSE)?|||	A1 Formerly named as "Ecozone Facilities Enterprise Engaging in Warehouse Operations", an ELSE is a registered business enterprise (RBE) supplying production-related raw materials and equipment that caters exclusively to the requirements of export manufacturing enterprises. It provides critical support, particularly to export manufacturing companies with their requirements for logistics support to facilitate their import and export shipments, sourcing of raw materials, inventory management, just-in-time deliveries, localization, and process customization.|||
Q2 Can an ELSE be considered an "export enterprise" as defined under the CREATE Act?	A2 **Yes**, ELSEs that render at least 70% of their output/services to another registered export enterprise are covered by the definition of "export enterprise".

Question	Clarification
Q3 If the enterprise only engages in trucking and delivery services, will it qualify to be registered as an ELSE?	A3 **No**, the definition of an RBE excludes certain service enterprises, such as those engaged in trucking or forwarding services. Moreover, BOI Memorandum Circular (MC) No. 2023-001 provided that the only type of logistic service that will qualify to be registered as an ELSE are those undertaking **BOTH** of the following: 1. Establishment of a warehouse storage facility; **and** 2. Importation or procurement from local sources and/or from other registered enterprises of goods for resale, or for packing/covering (including marking, labeling), cutting or altering to customer's specification, mounting and/or packaging into kits of marketable lots thereof for subsequent sale, transfer or disposition for export.
Q4 Inasmuch as ELSEs are considered export and enterprises under Section 293(M) of the NIRC of 1997, as amended, and as clarified by BOI MC No. 2023-001, will their purchases from the customs territory be considered VAT zero-rated?	A4 **Yes**. Purchases of registered ELSEs from VAT-registered suppliers are subject to VAT at zero-rate but shall only apply to goods and/or services directly and exclusively used in the registered project or activity of the ELSE.
Q5 In order for ELSEs to avail of VAT zero-rating on their local purchases that are directly and exclusively used in the registered project or activities, will there be procedures and requirements to be followed before availing such?	A5 **Yes**. Q and A numbers 32 to 37 under Section V of RMC No. 24-2022 provided the guidelines and documentary requirements for the availment of VAT zero-rating on their local purchases that are directly and exclusively used in the registered projects or activities. The processing of applications for VAT zero-rating shall be governed by RMO No. 7-2006 and its subsequent amendments, if any.

RMC No. 26-2023 circularizes the updated list of accredited Microfinance NGOs.

RMC No. 26-2023 dated 27 February 2023

- The RMC publishes the list of Microfinance NGOs accredited by the Microfinance NGO Regulatory Council (MNRC) as of January 2023. Said list also includes Certificates of Accreditation that have been expired or revoked by the MNRC.
- Under the IRR of Republic Act No. 10693 or the Microfinance NGOs Act, a Certificate of Accreditation shall be valid for a period of three years from the date of issuance, unless earlier revoked by the MNRC.

RMC No. 28-2023 circularizes RA No. 11898 (Extended Producer Responsibility Act of 2022) and its Implementing Rules and Regulations.

RMC No. 28-2023 dated 3 March 2023

- The BIR provides information and guidance on the copy of RA No. 11898, entitled "An Act Institutionalizing the Extended Producer Responsibility on Plastic Packaging Waste, Amending for this Purpose Republic Act No. 9003, Otherwise Known As The Ecological Solid Waste Management Act of 2000," Otherwise Known as the "Extended Producer Responsibility Act of 2022" and the copy of Department of Environment and Natural Resources (DENR) Administrative Order No. 2023-02, dated 24 January 2023, with the subject "Implementing Rules and Regulations of Republic Act No. 11898."

- Any provision of law to the contrary notwithstanding, Obliged Enterprises or Producer Responsibility Organizations (PRO) acting on their behalf, and other registered business enterprises may apply for incentives following the approval process provided under Title XIII (Tax Incentives) of the National Internal Revenue Code (NIRC) of 1997, as amended, for eligible activities: Provided, That such activities shall undergo the standard processes in the identification of qualified activities under the Strategic Investment Priority Plan.

- The Extended Producer Responsibility expenses of Obliged Enterprises, PROs, and private enterprises shall be considered as necessary expenses deductible from gross income, subject to the substantiation requirements for necessary business expenses deductible from gross annual income in accordance with Section 34 (A) (I) of the NIRC of 1997, as amended.

- All legacies, gifts and donations to Local Government Units, enterprises or private entities, including Non-Governmental Organizations, for the support and maintenance of the program for socially acceptable, effective and efficient solid waste management shall be exempt from all internal revenue taxes and customs duties, and shall be deductible in full from the gross income of the donor for Income Tax purposes. The standard procedures for such exemptions are contained in the Tariff and Customs Code, Section 105-106.

RMC No. 29-2023 clarifies the effect of publication of the List of Taxpayers Determined as CBL pursuant to existing guidelines.

RMC No. 29-2023 dated 3 March 2023

- Those with business transactions with CBLs shall be given precautions in their future transactions as there are tax consequences provided in the said RMC which are to their disadvantage.

    1. For Income tax, these include non-deductibility of purchases made with CBL taxpayers, whether the said purchases are related to cost of sales or operating expenses.

    2. For transactions with Value-Added Tax component, the same cannot be claimed as input tax, unless the buyer can prove the existence of supplier tagged as CBL by the BIR and the authenticity of the purchases made.

- The tax consequences, however, shall apply on transactions made after publication of the name of the CBL taxpayer.

- The publication of the names of CBL taxpayers is not a pre-requisite to suspend the running of the prescriptive period to assess under Section 203 of the Tax Code, as amended. Once the handling Revenue Officer has submitted a report that the taxpayer is a CBL and such report is supported by the required documents under existing policies, the suspension of the said prescriptive period already sets in and is tagged in the system as suspended.

RMC No. 30-2023 reiterates the basis for the computation of the Total Landed Value of imported automobiles in relation to the processing of applications for eATRIG submitted by importers of automobiles.

RMC No. 30-2023 dated 27 February 2023

- Per Sec. 2 (h) of Revenue Regulations No. 25-2003:

  "(h) TOTAL LANDED VALUE - shall refer to the total of the (i) market value of the motor vehicles imported as indicated in the motor vehicle reference books, such as the Japanese and U.S. Red Book, Karo and World Car Book on automobile utility vehicles and other motor vehicles, or the dutiable value as defined in Sec. 201 of the Tariff and Customs Code of the Philippines as amended, whichever is higher; (ii) customs duties paid on the imported goods; and (iii) all other charges arising from, or incident to, the importation."

- Based on the above definition, it is reiterated that in the computation of the Total Landed Value of imported automobiles, items (i), (ii) and (iii), as enumerated above, shall be considered. The BIR uses the U.S. Auto Red Book Online Price Digests as its reference for determining the proper market valuation of imported automobiles.

- The computation of the Ad Valorem Tax due on such imported automobiles shall be based on the following:

Description	Basis of Valuation (per Auto Red Book Online Price Digests)
1. Importer and at the same time engaged in business as a Dealer of Automobiles	Wholesale Price
2. Importer of Automobiles for personal or company use or not engaged in business as a Dealer of Automobiles	Retail Price

- For purposes of this Circular, Item 1, "Importer and at the same time engaged in business as a Dealer of Automobiles" shall mean that the importer/dealer of automobiles must satisfy the following requirements:

  1. He/she/it must be a holder of Permit to Operate (PTO) as an Importer and Dealer of automobiles for Excise Tax purposes;

  2. Has a dealership agreement/contract with foreign suppliers/manufacturers;

  3. Maintains a showroom or registered storage/warehouse facility;

  4. Imports by bulk or a minimum of 12 units in a 12-month period; and

  5. The imported automobiles are for sale to customers.

- The computation of the Ad Valorem Tax due on automobiles in cases where Importers do not satisfy the foregoing requirements shall be based on retail price.

Banks and Other Financial Institutions

Amendments to the Regulations on Personal Equity and Retirement Account (PERA)

Circular No. 1168 approves the amendments to Section 1121 and Appendix 114 of the MORB and Section 1121-Q and Appendix Q-69 of the MORNBFI to reduce the rate for the security for the faithful performance of PERA Administrators' duties and to increase the amount for the maximum annual PERA contribution.

Circular No. 1168 Series of 2023 issued on 21 February 2023

Section 1121/1121-Q of the MORB/MORNBFI is hereby amended to read, as follows:

1121/1121-Q PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA) MARKET PARTICIPANTS AND PERA INVESTMENT PRODUCTS

Security for the faithful performance of administrators' duties. As a security for the faithful performance of its duties under the PERA Act, an Administrator shall hold eligible government securities, equivalent to at least zero percent (0.0%) of the book value of the total volume of PERA assets administered, earmarked in favor of the Bangko Sentral ng Pilipinas (BSP) starting 1 January 2023:

For this purpose, eligible government securities shall consist of evidence of indebtedness of the Republic of the Philippines or of the BSP or any other evidence of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or such other kinds of securities, which may be declared eligible by the Monetary Board: Provided, That, such securities shall be free, unencumbered, and not utilized for any other purpose.

- Valuation of securities and basis of computation of the basic security deposit requirement.

    1. Government securities deposited with the BSP shall be measured at fair value

Appendix 114/Q-69 of the MORB/MORBBFI is hereby amended to read, as follows:

OPERATIONAL GUIDELINES ON THE ADMINISTRATION OF THE PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA) (Appendix to Sec. 1121/1121-Q)

Pursuant to R.A. No. 9505 also known as the (PERA Act) and its Revised Implementing Rules and Regulations (Revised PERA Rules), the following operational guidelines on the administration of PERA are hereby issued. Certain capitalized terms herein used shall have the definitions ascribed to them in the Revised PERA Rules unless the context otherwise requires.

Account Administration

- Contributions
    1. The administrator shall –
        - Secure proof of income when a contribution is made and ensure that the maximum allowable aggregate contribution per calendar year as prescribed under the Revised PERA Rules has not been exceeded. If in case proof of income is already obtained for a contribution made during the calendar year, the same shall no longer be required for subsequent contributions made during the year.

            For this purpose, prior to contribution, the status of an overseas Filipino (OF) shall be validated by securing from the OF a sworn certification on his continuing status as an OF for the calendar year;

Lastly, the submission of the Quarterly Report on Compliance with the Basic Security Deposit Requirement under Section 1121/1121-Q and Appendix 7/Q-3 of the MORB/MORNBFI shall no longer be required starting with the reference period of 31 March 2023.

Financial Action Task Force (FATF) Publications

Circular Letter No. CL-2023-015 informs all BSFIs of the FATF publications on: (i) high-risk jurisdictions subject to a call for action. (ii) jurisdictions under increased monitoring and (iii) the Russian Federation.

Circular Letter No. CL-2023-015 Series of 2023 issued on 2 March 2023

- **High Risk Jurisdictions subject to a Call for Action**
  1. Jurisdictions subject to a FATF call on its members and other jurisdictions to apply countermeasures

     Democratic People's Republic of Korea (DPRK) and Iran (unchanged since February 2020)

     BSFIs should refer to the FATF statement on these jurisdictions adopted on 21 February 2020. While the statement may not necessarily reflect the most recent status of Iran and the DPRK's anti-money laundering/ countering terrorist financing (AML/CFT) regimes, the FATF's call to apply countermeasures on these high-risk jurisdictions remains in effect.

     In addition, BSFIs should take necessary actions (such as immediate freezing and filing of returns) required under relevant issuances on Targeted Financial Sanctions (TFS) in case of funds or property, including related accounts, of the designated persons and entities referred to in all applicable United Nations Security Council (UNSC) and AMLC Resolutions.

  2. Jurisdiction subject to FATF call on its members and other jurisdictions to apply enhanced due diligence (EDD) measures proportionate to the risks arising from the jurisdiction

     Myanmar (unchanged since October 2022)

     Given the continued lack of progress and the majority of its action items still not addressed after a year beyond the action plan deadline, the FATF decided that further action was necessary in line with its procedures and calls on its members and other jurisdictions to apply EDD measures proportionate to the risk arising from Myanmar. When applying EDD measures, countries should ensure that flow of funds for humanitarian assistance, legitimate non-profit organization activity and remittances are not disrupted.

- **Jurisdictions under Increased Monitoring** – The FATF has issued an updated list of jurisdictions under increased monitoring. These countries are actively working with the FATF and have committed to resolve swiftly the identified strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing within agreed timelines.

  The FATF encourages its members and all jurisdictions to take into account the information presented in their risk analysis.

- **Statement on the Russian Federation** – The FATF continues to call upon all jurisdictions to remain vigilant of threats to the integrity, safety and security of the international financial system arising from the Russian Federation's war against Ukraine. The FATF reiterates that all jurisdictions should be alert to possible emerging risks from the circumvention of measures taken in order to protect the international financial system and take necessary measures to mitigate these risks.

Consolidation of Metro South Cooperative Bank, Consolidated Cooperative Bank and Bataan Cooperative Bank to be known as One Cooperative Bank (One CB)

Circular Letter No. CL-2023-019 provides for the approval of the consolidation of Metro South Cooperative Bank, Consolidated Cooperative Bank and Bataan Cooperative Bank to form a new cooperative bank to be known as One CB.

Circular Letter No. CL-2023-019 Series of 2023 issued on 10 March 2023

One CB was registered with the Cooperative Development Authority on 22 December 2022 and the corresponding Certificate of Authority to operate as a cooperative bank was issued by the BSP on 25 January 2023. It started its operations on 27 February 2023.

People's Hawak Kamay Bank, Inc. – A Rural Bank – Establishment and Commencement Operations

Circular Letter No. CL-2023-020 provides for the approval of the application for authority to establish a rural bank to be known as People's Hawak Kamay Bank, Inc. – A Rural Bank.

Circular Letter No. CL-2023-020 Series of 2023 issued on 10 March 2023

The Bank was registered with the Securities and Exchange Commission on 10 October 2019. The corresponding Certificate of Authority to Operate as a rural bank was signed by the BSP Governor on 3 February 2023. The Bank started its operations on 1 March 2023.

Submission of Prudential Reports Using Extensible Mark-up Language (XML) format through Application Programming Interface (API)

Memorandum No. M-2023-004 enjoins banks to complete the foregoing requirements in preparation for the live implementation of the API-based submission of prudential reports.

Memorandum No. M-2023-004 Series of 2023 issued on 20 February 2023

Memorandum No. M-2023-004 provides the below schedule:

- Parallel run of the new FRPv15, which shall be used for the API-based submission, shall cover the March 2023 quarter-end reports and the April and May 2023 month-end reports. The FRPv15 shall be submitted within 20 (for solo basis) and 35 (for consolidated basis) banking days from end of the reference period, as applicable.

- The existing FRPv14.5 and covered FRP- related reports being submitted through the Financial Institutions Portal (FI Portal)/Email submission pursuant to existing submission guidelines shall continue to be considered as the official submission of banks for the March 2023 quarter-end and the April and May 2023 month-end reports.

- The Live submission of the FRPv15 shall start with the June 2023 quarter-end and July 2023 month-end reports. The FRPv14.5 and covered FRP-related reports shall no longer be submitted beginning the said periods.

- Banks may use the XML Converter Facility of the BSP under the BSP Relationship Management System – Integral Financial Supervision System (BRMS-IFSS) web portal for the submission of the FRPv15 subject to the following conditions:

    1. Universal/Commercial banks (UKBs) and Digital Banks (DBs) and their subsidiary thrift and rural/cooperative banks may use the converter facility during the parallel run of the FRPv15. Beginning with the live implementation of the FRPv15 reports for the reporting period ending 30 June 2023, the BSP XML Converter Facility will no longer be available to U/KBs and DBs and their subsidiary thrift and rural/cooperative banks and, as such, they shall use their own XML facility and shall submit the same via the API facility.

2. The submission of the generated XML report using machine-to-machine modality by UKBs, DBs, and their subsidiary banks for both the parallel run and live implementation shall be done using the bank's own process as coordinated with the BSP or via the approach introduced by the BSP using Postman protocol.

- Other thrift/rural/cooperative banks may use the BSP XML Converter and submit their XML reports via Web Auxiliary facility (BSP Relationship Management System or BRMS) provided by the BSP during the parallel run and live implementation until further notice.

- Any changes to the abovementioned schedule or other related matters shall be communicated accordingly.

Implementation of BSP Circular No. 1055 on the Adoption of a National Quick Response (QR) Code Standard

Memorandum No. M-2023-005 approves the QR Code Standard.

Memorandum No. M-2023-005 Series of 2023 issued on 23 February 2023

Memorandum No. M-2023-005 provides the following pursuant to BSP Circular No. 1055 dated 17 October 2019:

- In line with the thrust of the BSP to ensure the safe, efficient and reliable operations of payment systems in the country as provided in Republic Act (R.A.) No. 11127 or the National Payment Systems Act, all payment service providers (PSPs), as defined in BSP Circular No. 1055 shall adopt the National QR Code Standard, which is also referred to as "QR Ph" in this Memorandum, in QR-enabled payment services offered to end users.

- All PSPs deploying QR Ph-enabled payment services to merchants/businesses shall require such merchants/businesses to display and utilize the QR Ph codes in their payment acceptance. Said PSPs shall provide appropriate product training on QR Ph to their client-merchants, including their store cashiers and managers, specifically on the features and benefits of QR Ph Php2M, so that they are able to provide appropriate guidance to customers on the use of QR Ph and enable customers to maximize the benefits of this interoperable National QR Code Standard.

- All PSPs participating in the InstaPay automated clearing house (ACH) and offering QR-enabled payment services are required to submit a notarized certification of deployment of QR-enabled payment services compliant or non-compliant to the QR Ph standard including the information on the payment service use cases that the non-QR Ph codes are being utilized. The certification shall be submitted to the appropriate oversight department of the BSP not later than 30 calendar days from the date of this Memorandum.

- All PSPs deploying non-QR Ph codes, which is also referred to as proprietary QR codes, for payment services shall be allowed to transition to the QR Ph until 30 June 2023.

- Beginning 1 July 2023, all proprietary QR codes for payments services shall be disabled and shall no longer be available to the public.

    1. Receiving PSPs – PSPs offering QR-enabled payment services to their client-merchants/businesses shall disable acceptance of payments via non-QR Ph codes or proprietary QR codes. An appropriate notification shall prompt and inform the payor of the cause of an unsuccessful payment transaction caused by the use of a non-QR Ph code.

2. Sending PSPs – The internet platforms and mobile applications of PSPs shall no longer support the scanning of non-QR Ph codes or proprietary QR codes.

- Pending the full compliance by a PSP of the requirements under this Memorandum by 1 July 2023, no new electronic fund transfer service of such PSP shall be approved until proof of compliance with this Memorandum have been satisfactorily demonstrated by such PSP.

- PSPs are reminded of Section 1 of BSP Circular No. 1055 on supervisory enforcement actions that the BSP may deploy to ensure compliance with the provisions of this Memorandum and bring about timely corrective actions.

  Likewise, PSPs are reminded of the applicable sanctions to erring PSPs as provided in Section 19 of RA No. 11127 and Section 37 of RA No. 7653, as amended, (The New Central Bank Act, as amended). Thus, in the event that any of the submitted certificate/s of compliance is/are found to be erroneous and/or untrue, the concerned PSP may be meted the appropriate sanction under Section 37 of RA No. 7653, as amended, for willful making of a false or misleading statement.

- The Philippine Payments Management Inc. (PPMI), as the accredited Payment System Management Body (PSMB) pursuant to RA No. 11127, shall monitor and lead its members towards full adoption of the National QR Code Standard. The BSP shall work with the PPMI on the appropriate implementation of this Memorandum.

Guidelines on the Electronic Submission of Reportorial Requirements Applicable to Digital Banks (DGBs)

Memorandum No. M-2023-006 provides for the observation by DGBs in the submission of required reports for the reporting period beginning end-February 2023.

Memorandum No. M-2023-006 Series of 2023 issued on 10 March 2023

Memorandum No. M-2023-006 requires the following below:

- The list of covered reports for electronic submission, the mode of submission for each covered report, the prescribed file name and file format for the said reports, and the required standard format for the subject line of the e-mail transmission are provided in the attached Annex A.

- The prescribed Data Entry Template (DET), corresponding control proof list (CP), certification form, and other relevant documents pertinent to the covered reports may be downloaded from www.bsp.gov.ph/SES/reporting_templates or requested from the BSP-Department of Supervisory Analytics (DSA) through DSAReports@bsp.gov.ph, using the prescribed format for the subject, [REQUEST] <NAME OF REPORT> Template.

- The prescribed DET or database file, as the case may be, together with the corresponding certification form and/or scanned CP in Portable Document Format (PDF) duly certified and signed by the authorized official of the reporting DGB shall be transmitted electronically through the BSP Financial Institution Portal (FIP) or to the prescribed e-mail address, as indicated in the attached Annex A, within the prescribed deadline.

- Hard copy submissions shall not be accepted. DGBs that are unable to transmit electronically may submit the report and the corresponding scanned CP saved 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, Manila 1004

  Submission through this mode shall be resorted only in cases of business disruptions affecting the connectivity between the BSP and BSFI.

- A DGB can officially register a maximum of four e-mail addresses to be used for submission of reports via email. One of the said four e-mail addresses should belong to the Compliance Officer. Each officially designated e-mail address must be registered to only one official. In no case shall there be two or more registered officials for a single registered e-mail address.

- The scanned copy of the signed Registration Form (RF) in PDF and its corresponding Excel file shall be electronically transmitted, to the prescribed e-mail address, as follows:

File Name and Format	E-mail Address
ReportRF.xls	dsa-reportrf@bsp.gov.ph
ReportRF.pdf	

- Among the officially registered e-mail address/es of authorized officers of the bank under the fifth item, a maximum of three e-mail addresses for DGBs shall be allowed to access the BSP FIP, one of which should belong to the Compliance Officer. The said accounts must register for Two Factor Authentication (2FA) following the User Guide for 2FA registration which is attached as Annex B to Memorandum No. M-2020-073 dated 25 September 2020.

- Only electronic submissions originating from officially registered e-mail address/es of the DGBs shall be recognized and accepted by the DSA. The same registered e-mail address/es shall be used by the DSA in electronically acknowledging the submitted reports and transmitting the corresponding validation results.

- Report submissions that do not conform to the above prescribed procedures shall not be accepted and, thus, considered unsubmitted. It likewise follows that only the DETs or database file structures and other prescribed files by the BSP shall be accepted as compliant with the existing reportorial requirements subject to validation and applicable penalties for late and/or erroneous reporting.

Bureau of Customs

Importation of Leather Scraps is NOT Regulated

AOCG Memo No. 114-2023 provides that the importation of leather scraps is not regulated by RA No. 6969 hence, IC is not required.

AOCG Memo No. 114-2023 dated 28 February 2023

- Environmental Management Bureau – Department of Environmental and Natural Resources (EMB-DENR) only regulates and issues IC for recyclable materials containing hazardous substances destined for resource recovery and recycling pursuant to Chapter 10 of DENR Administrative Order (DAO) 2013-22. However, importers are not exempted from securing a clearance or permit from other government agencies that may regulate such material.

Amendment of CMO No. 43-2019 Implementing the Fuel Marking Program Pursuant to DOF-BOC Joint Circular No. 001.2019

CMO No. 04-2023 amends Section 5.1 of CMO No. 43-2019 pursuant to the recommendation of the PIO under Section 5.2 of CMO No. 43-2019.

CMO No. 04-2023 dated 7 March 2023

- To ensure that all imported petroleum products covered by this CMO are accounted for and tax paid, the following ports of entry, including their sub-ports, are initially authorized as ports of discharge for gasoline, diesel, and kerosene arriving in bulk.

  1. Port of Batangas
  2. Port of Limay
  3. Port of Subic
  4. Port of Davao
  5. Port of Cagayan De Oro
  6. Port of Cebu
  7. Port of Tacloban
  8. Port of Iloilo
  9. Port of Aparri
  10. Port of San Fernando La Union
  11. Port of Zamboanga
  12. Port of Legaspi

Renaming the Sub-port of Dadiangas to Sub-port of General Santos in the E2M System

MISTG Memo No. 04-2023 presents the announcement of Renaming the Sub-port of Dadiangas to the Sub-port of General Santos as stated in CMC No. 30-2023.

MISTG Memo No. 04-2023 dated 16 March 16 2023

- The following changes in the E2M System will be implemented on 16 March 2023:

PORT CODE	FROM	TO
P12A	Sub-Port of Dadiangas (SEA)	Sub-port of General Santos (SEA)
P12AA	Sub-Port of Dadiangas Int'l Airport	Sub-Port of General Santos Int'l Airport

SEC Filing, Payments and Other Deadlines

Extension of Deadlines for the 2023 Filing of Annual Financial Statements

SEC Memorandum Circular No. 1 extends filing of the submission of the Annual Financial Statements for specific entities.

SEC Memorandum Circular No. 1 dated 27 February 2023

The SEC revised the Sections 1.1 and 1.4 of the Memorandum Circular (MC) No. 9, Series of 2022, 2023 *Filing of Annual Financial Statements and General Information Sheets*:

- Audited Financial Statements of Companies Whose Calendar Year Ends on 31 December 2022:

  All corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, whose calendar year ended on 31 December 2022, shall file their AFS through the SEC Electronic Filing and Submission Tool (eFAST), in accordance with the following revised filing schedules, depending on the last numerical digit of their SEC registration or license numbers:

Revised Filing Schedule	Last Digits of SEC Registration/ License Numbers
May 29, 30, 31, June 1, 2	1 and 2
June 5, 6, 7, 8, 9	3 and 4
June 13, 14, 15, 16	5 and 6
June 19, 20, 21, 22, 23	7 and 8
June 26, 27, 29, 30	9 and 0

  All corporations under the jurisdiction of the SEC Extension Offices shall be governed by the same coding schedules in 2023.

  Late filings or submissions after the due dates provided above shall be accepted starting 3 July 2023 and shall be subject to the prescribed penalties, which shall be computed from the date of the last day of filing stated above.

- All provisions under MC No. 9, Series of 2022, except for Sections 1.1 and 1.4, as revised, remain to be effective. To reiterate the Section 1.2 of the said MC, the above revised filing schedule **shall not** apply to the following corporations:

  1. Those whose fiscal year (FY) ends on a date other than 31 December 2022. These entities shall file their AFS within 120 days from the end of their FY.

     - *Note:* For brokers and dealers whose FY end on 31 December SEC Form 52-AR shall be filed with SEC depending on the last numerical digit of their registration numbers; while whose FY end on a date other than 31 December shall file the said Form, 110 calendar days after the close of their respective FY.

  2. Those whose securities are listed on the Philippine Stock Exchange (PSE), those whose securities are registered but not listed on the PSE, those considered as public companies, and other entities covered under Sec.17.2 of the SRC. These entities shall file their AFS within 105 calendar days after the end of FY, as attachment to their Annual Reports (SEC Form 17-A).

3. Those whose AFS are being audited by the Commission on Audit (COA), provided that the following documents are attached to their AFS:

    - Affidavit signed by the President and Treasurer (or CFO, where applicable) attesting to the fact that the company provided the COA with the financial statements and supporting documents in a timely manner and that the audit of the COA has just been concluded; and

    - A letter from COA confirming the information provided in the affidavit

- All other circulars, memoranda and implementing rules and regulations that may be inconsistent shall be deemed modified or amended accordingly.

(Editor's Note: SEC Memorandum Circular No. 1, s. 2023 was published in The Philippine Star *and* Philippine Daily Inquirer *on 4 March 2023)*

Grant of Amnesty for Non-Filing and Late Filing of the General Information Sheet (GIS) and Annual Financial Statement (AFS), and Non-Compliance with Memorandum Circular (MC) No. 28, S.2020

SEC Memorandum Circular No. 2 provides for the guidelines and procedures on availment of amnesty on fines and penalties for non-filling of GIS and AFS, and non-compliance of MC no. 28, S. 2020.

SEC Memorandum Circular No. 2 dated 16 March 2023

The SEC provides for the guidelines and procedures on availment of amnesty on fines and penalties for (1) non-filling and late filing of the GIS for the latest and prior years; (2) the non-filing of and late filing of the AFS for the latest and prior years; and (3) non-compliance of MC no. 28, S. 2020.

Section 1. *Covered Violations*.

Unless otherwise provided, an amnesty on the unassessed (not yet assessed) and/or uncollected fines and penalties by the SEC (already assessed not yet paid) is authorized to be granted to all corporations, including branch offices, representative offices, regional headquarters, and regional operating headquarters of foreign corporations and foundations, for the following violations:

1. Non-filing of GIS for the latest and prior years;

2. Late- filing of GIS for the latest and prior years;

3. Non-filing of AFS, including fines for its attachments (i.e., Certificate of Existence of Program/Activity, Non-Stock, Non-Profit Organization Forms), for the latest and prior years; and

4. Late filing of AFS, including fines for its attachments (i.e., Certificate of Existence of Program/Activity, Non-Stock, Non-Profit Organization Forms), for the latest and prior years.

Above also covers associations, partnerships, and persons under the jurisdiction and supervision of SEC that failed to comply with MC No. 28.

Section 2. ***Amnesty Rates.***

The applicable rates will be as follows:

A. Amnesty rate for Non-Filing and Late Filing of GIS and/or AFS, and MC No. 28 violations:

Violation	Fines
Non-Filing / Late Filing of GIS	**Php5,000** (Encompassing **all violations** on non-filing and late filing of GIS, and AFS and its attachments)
Non-Filing / Late Filing of AFS	
MC No. 28., s. 2020	**Waived** (Php10,000)

The foregoing rate will apply, provided that, the applicant corporation or entity will (1) submit the latest reportorial requirements due at the time of application; AND (2) comply with MC No. 28, s. 2020 through the MC28 Submission Portal.

B. Amnesty rate for **Suspended and Revoked Corporations**, including those which have filed for the lifting or suspension/revocation, are as follows:

Violation	Fine
Non-Filing / Late Filing of GIS	**50% of the assessed fines** (Encompassing **all violations** on non-filing and late filing of GIS, and AFS and its attachments)
Non-Filing / Late Filing of AFS	
MC No. 28., s. 2020	**Waived** (Php10,000)

The foregoing rate will apply, subject to the payment of filing/petition fee and the appropriate proceedings to be filed with the Company Registration and Monitoring Department (CRMD) and Extension Offices (EOs) and compliance with the requirements under Section 3 of this MC.

Section 3. ***Filing of Application and Supporting Documents***

On or before 30 April 2023, the duly authorized representative or resident agent of the corporation ("applicant") shall file an Online Expression of Interest Form ("EOI") via the Electronic Filing and Submission Tool (eFAST).

The applicant must present proof of his or her authority (e.g., Notarized Secretary's Certificate or Board Resolution, or written Power of Attorney of the resident agent duly filed with the Commission in compliance with Section 128 of Batas Pambansa Bldg. 68, or Section 145 of the RCC) with the following requirements:

- For Domestic Corporations (Ordinary Stock and Non-Stock):

    1. Latest due FS or undertaking to submit FS within 45 calendar days from issuance of confirmation of payment;
    2. Latest due Amended FS, if any;
    3. Latest due GIS;
    4. Latest due Amended GIS, if any; and
    5. Proof of compliance with MC No. 28

- For Foreign Corporations (Branch Offices, Representative Offices, Regional Area Headquarters, and Regional Operating Headquarters):

    1. Latest due FS or undertaking to submit FS within 45 calendar days from issuance of confirmation of payment;
    2. Latest due Amended FS, if any;
    3. Latest due GIS;
    4. Latest due Amended GIS, if any; and
    5. Proof of compliance with MC No. 28

The MC further provides for the application and payment procedures for non-compliant corporations and for revoked and suspended corporations.

Corporations which have fully complied with all the conditions including the payment of the relevant fines and penalties shall be issued with a Confirmation of Payment for Amnesty on Fines and Penalties (Confirmation). The amnesty granted under this MC is final and irrevocable, covering the period/s indicated in the said Confirmation.

The issuance, however, of the Confirmation shall not exempt the corporation from filing its subsequent mandatory reportorial requirements in a timely manner and, in the case of Revoked/Suspended Corporations, shall not automatically lift its Suspended/ Revoked status which shall be a separate proceeding before the CRMD.

Section 5. ***Exceptions*****.** The following entities are excluded from the coverage of the amnesty under this MC:

- Corporation whose securities are listed on the Philippine Stock Exchange (PSE);
- Corporation whose securities are registered but not listed on the PSE;
- Corporation considered as Public Companies;
- Corporations with intra-corporate dispute;
- Corporations with disputed GIS; and
- Other corporations covered under Sec, 17.2 of RA no. 8799 or the "Securities Regulation Code".

Section 6. ***Validity of Amnesty*****.** Only those which have filed an amnesty application and secured a PAF through the eFAST, and paid through the eSPAYSEC or LBP On-Coll Facility until 30 April 2023 shall be eligible for amnesty under this MC. Thereafter, the existing scale of fines and penalties issued by the SEC shall be observed.

(Editor's Note: SEC Memorandum Circular No. 2, s. 2023 was published in The Manila Bulletin *and* Philippine Daily Inquirer *on 17 March 2023)*

Alternative Mode for Distributing and Providing Copies of the Notice of Meeting, Information Statement, and Other Documents in connection with the holding of 2023 Annual Stockholders' Meeting (ASM) for all Publicly Listed Companies (PLC), Public Companies and Other Companies with Registered Securities

The SEC Notice provides for an Alternative Mode of complying with the existing requirements in the conduct of 2023 ASM for all PLC, Public Companies and Other Companies with Registered Securities.

SEC Notice dated 13 March 2023

Concerned companies shall be allowed to publish the Notice of Meeting for the 2023 ASM in the business section of two newspaper of general circulation, in both print and online format, for two consecutive days; Provided that, the last publication date of the Notice of Meeting (print and on-line) shall be made no later than 21 days prior to the scheduled ASM.

The Notice of Meeting shall inform the shareholders of the following:

- Date, time and place of meeting and other information as may be required under the Revised Corporation Code (RCC), other issuances of the SEC or By-laws of the Corporation; and

- The availability of an electronic copy of the Information Statement, Management Report, SEC Form 17A and other pertinent documents, as may be necessary under the given circumstances, on the Company's website, and additionally, on the PSE Edge for PLCs.

The prescribed mode shall be an alternative to the available modes of sending Notices of Meetings as provided in the Concerned Companies' bylaws.

Compliance by the Concerned Companies with the foregoing shall be considered a fulfillment of the requirements on the distribution and provision of the aforementioned documents as required under the 2015 SRC IRR, RCC and other applicable SEC issuances.

PEZA

PEZA Memorandum Circular No. 2023-013 circularizes FIRB Administrative Order No. 002-2023 dated 23 February 2023 for the deferral of the CNLA requirement under FIRB AO No. 001-2023 or the Supplementary Guidelines to Operationalize the Registration of RBEs in the IT-BPM Sector with the BOI, pending the issuance of a Joint Memorandum Circular to operationalize Rule 2, Section 4(B)(3) of the IRR of the CREATE Act.

PEZA Memorandum Circular No. 2023-013 dated 28 February 2023

Starting 1 February 2023, the importations of transferee RBEs, i.e., RBEs in the IT-BPM sector which registered with the BOI, may now process their tax exemption indorsement (TEI) from the Department of Finance – Revenue Office without the CNLA.

PEZA Memorandum Circular No. 2023-017 circularizes FIRB Administrative Order No. 005-2023 dated 15 March 2023 for the extension of the bond-free period for the movement of IT equipment and assets from 31 March 2023 to 30 June 2023 under FIRB Resolution No. 033-22.

PEZA Memorandum Circular No. 2023-017 dated 15 March 2023

This will provide additional time for the covered RBEs in the IT-BPM sector to process the TEI from the Department of Finance – Revenue Office (covering existing goods imported as of 31 January 2023.

PEZA Memorandum Circular No. 2023-018 circularizes FIRB Administrative Order No. 003-2023 dated 16 March 2023 for the amended guidelines on the TEI requirement under FIRB AO No. 001-2023.

PEZA Memorandum Circular No. 2023-018 dated 17 March 2023

The amended guidelines provides that:

"Effectively, the TEI shall no longer be required for VAT exempt and/or duty exempt importations that are or will be permanently stationed within, or that will be fully utilized or consumed within the economic zones and/or freeport zones. The TEI shall ***only*** *be secured for VAT exempt and/or duty exempt importations that will be moved out of or are currently outside the economic zones and/or freeport zones."*

The PEZA transferee RBEs shall comply with the standard procedures for importation and movement of goods. An Import Permit (IP) lodged through the PEZA electronic Import Permit System (eIPS) shall indicate an annotation that the "TEI shall be secured in the event that the imported goods under this permit will be moved out of the economic zone."

The amended guidelines also provide that in case there is an urgent need to move assets out of the economic zones during the pendency of the blanket TEI application, the covered RBEs may, after the lapse of the bond-free transition period for existing assets or starting 1 February 2023 for new assets, lodge with the Bureau of Customs a Provisional Goods Declaration and secure a specific bond thereon, for purposes of moving the goods or assets out of the economic zones, subject to the provisions of Customs Administrative Order No. 02-2021 and other related issuances of the BOC.

Court of Tax Appeals

Refund/ Issuance of Tax Credit

Diddley Bow Investments Holdings B.V. vs Commissioner of Internal Revenue
CTA Case No. 9759, promulgated 2 March 2023

T-Bonds are obligations of the Republic of the Philippines, and the interests accruing or arising therefrom are exempt from income taxation in the Philippines, pursuant to the Section 32(B)(5) of the Tax Code, as amended, in relation to Article 11 (3)(a) of the RP-Netherlands Tax Treaty.

Facts:

Company B is a corporation established and incorporated in the Netherlands. It is not registered as a corporation or partnership with the Philippine Securities Exchange Commission, and it is not engaged in trade or business in the Philippines.

Company B, through its custodian, JP Morgan Chase Bank N.A., and its sub-custodian, Hongkong & Shanghai Banking Corp. (HSBC), invested in various Treasury Bonds (T-Bonds), with maturities of more than one year. The yield of the T-Bonds was represented by coupons, which are computed as a percentage of the face value of the T-Bonds on a per annum basis and payable semi-annually.

During the period from January to August 2016, Company B derived interest income from its investments in T-Bonds, which was subjected to final withholding tax (FWT) at the rate of 20%. The FWT on Company B's interest income from Philippine T-Bonds were withheld and remitted to the BIR by the Bureau of Treasury (BoTr).

On 2 October 2017, Company B filed with the BIR an administrative claim for the refund of or the issuance of a Tax Credit Certificate (TCC), representing the FWT erroneously withheld on the interest income derived by Company B during the period from 26 January 2016 to 17 August 2016.

Issue:

Is Company B entitled to refund of the FWT paid on the interest from Philippine T-Bonds?

Ruling:

Yes, Company B is entitled to refund.

For the present claim for refund to prosper, Company B must not only establish that it has filed its refund claim in a timely manner, but it must also likewise prove that the subject FWT paid fall under the above-stated definition of "erroneous or illegal tax".

The BoTr paid and remitted to the BIR the FWT on the first coupon payment on 29 January 2016. Counting two years from such date, Company B had until 29 January 2018, at the earliest, within which to file its claim both in the administrative and judicial levels. Clearly, Company B's administrative claim filed on 2 October 2017 and the subsequent appeal before the CTA on 26 January 2018 were within the two-year period prescribed by law.

The subject FWT are also found to be erroneously or illegally paid or collected. The Philippines – Netherlands Tax Treaty provides that interest arising in one of the States and paid in respect of a bond, debenture or other similar obligation of the Government of that State or of a political subdivision or local authority thereof shall be exempt from tax in that State.

The Secretary of Finance, through the BoTr, is authorized under RA No. 245, as amended, to issue evidence of indebtedness such as treasury bills and bonds to meet public expenditures or to provide for the purchase, redemption, or refunding of any obligations. It is authorized to borrow from time to time on the credit of the Republic of the Philippines such sum or sums as in his or her judgment may be necessary, and to issue therefor evidence of indebtedness of the Philippine Government.

Thus, the subject T-Bonds are obligations of the Republic of the Philippines, and the interests accruing or arising therefrom are exempt from income taxation in the Philippines.

Assessment

One Cypress Agri-Solution Inc. vs Commissioner of Internal Revenue
CTA Case No. 9937, promulgated on 7 March 2023

The Registry Receipt only proves the fact of mailing. Mere presentation of registry receipts is not sufficient. It is also required that said registry receipts must be signed by the concerned taxpayer's duly authorized representative, and that the signatures are identified and authenticated.

Facts:

Company C, a domestic corporation, received on 7 February 2017 a Preliminary Assessment Notice (PAN) dated 26 January 2017, together with the Details of Discrepancies, alleging company C's deficiency taxes.

Subsequently, on 7 September 2018, Company C attempted to withdraw a certain amount from its bank. However, Company C was then informed by the said bank that its account had been garnished by the BIR and was given a copy of the Warrant of Garnishment dated 20 July 2018. The said Warrant of Garnishment stated that there is an amount due from Company C representing its alleged deficiency income tax and VAT for the taxable year (TY) 2013.

Company C filed its Petition for Review with Urgent Motions To Lift Warrant of Garnishment and For Suspension of Collection of Tax by the Issuance of Temporary Restraining Order and/ or Writ of Preliminary Injunction on 27 September 2018.

Company C alleged that on 7 February 2017, they had received the PAN, which was mailed to the same registered address of Company C through registered mail. Company C also claims that they did not receive the Final Assessment Notice/Formal Letter of Demand (FAN/FLD) which was allegedly mailed to the same registered address of Company C through registered mail on 1 March 2017, barely one month after the mailing of the PAN.

The BIR alleged that records show that the PAN as well as the FAN were not only sent to the registered address of Company C but also to the alternative address of the President of Company C and to Company C's incorporators at their respective addresses as indicated in their General Information Sheet.

Issue:

Was Company C afforded due process in the issuance of the FAN and Warrant of Garnishment?

Ruling:

No, Company C was not afforded due process as the BIR was not able to prove that it properly served the FAN/FLD to Company C.

The Registry Receipts presented by the BIR as evidence merely proved the fact of mailing, and nothing more. Nowhere can it be seen from the same evidence that the subject FAN and FLD were actually served on, and received by, Company C or by any of its authorized representative. In other words, the fact of receipt by Company C or its authorized representative is not indicative in the said Registry Receipts.

In addition, no signature appears on the subject Registry Receipts. Correspondingly, the fact of service on, and receipt by, Company C of the subject FAN and FLD were never established by the BIR.

The Registry Receipts are likewise not accompanied by an "instruction to the Postmaster to return the mail to the sender after 10 days, if undelivered," and that the same documents do not contain any identifiable details of the transaction, as required under Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013.

There is also no showing by the BIR that a written report under oath was made, setting forth the manner, place and date of service, the name of the person who received the same, and such other relevant information, as required by the rules. Such being the case, the BIR neglected to show compliance with the requirements under the regulations, and thus, has failed to prove that Company C received the said notices.

Xpert Air Services, Inc. vs The Commissioner of internal Revenue
Case No. 10171, promulgated 14 March 2023

There is no need for revalidation of the LOA even if the prescribed audit period has been exceeded. The failure of the revenue officer to complete the audit within the prescribed period will not cause its invalidity but would only expose the revenue officer to administrative sanctions.

A Warrant of Distraint or Levy issued while the appeal of Final Decision on Disputed Assessment to the Commissioner of Internal Revenue remains pending is invalid.

Facts:

The BIR issued a LOA authorizing the Revenue Officer (RO) and Group Supervisor (GS) to examine Company X's books of accounts and other accounting records for all internal revenue taxes from 1 January 2010 to 31 December 2010.

On 10 May 2019, Company X received the Final Decision on Disputed Assessment (FDDA) with attached Details of Discrepancy and signed by the Regional Director, assessing it of deficiency income tax, value-added tax, improperly accumulated earnings tax and compromise penalty.

On 6 June 2019, Company X filed its appeal to the CIR.

On 29 August 2019, pending action by the CIR of Company X's administrative appeal, the BIR issued and served to Company X a Warrant of Distraint and/or Levy (WDL).

On 25 September 2019, Company X filed the instant petition for review.

Company X claims that the deficiency assessments which the WDL seeks to collect are null and void as the LOA allegedly ceased to be valid. According to Company X, the RO had 120 days form 25 August 2011, or until 23 December 2011, to conduct the audit and submit the report. However, the RO failed to submit the Progress Report and surrender the LOA for revalidation and the issuance of a new LOA, making the assessment invalid.

Issue:

Is the assessment invalid for the failure of the BIR Revenue Officer to revalidate the existing LOA?

Ruling:

No, the LOA remains valid, however, the WDL is void for having been issued prematurely.

Nowhere in the Tax Code does it state that an LOA needs to be revalidated after the lapse of 120 days for it to be continuously valid ("revalidation rule"). The revalidation rule has already been withdrawn starting 1 June 2010. The RMO provides there is no need for revalidation of the LOA even if the prescribed audit period has been exceeded but the Revenue Officer who fails to complete the audit within the prescribed shall be subject to the applicable administrative sanctions. This rule was already applicable when the subject LOA was issued on 25 August 2011.

Accordingly, Company X's assertion that the WDL dated 29 August 2019 is void because it emanated from an invalid LOA is without merit. The subject LOA remains valid even if the RO fails to finish the audit and submit the final investigation within 120 days.

Nonetheless, the WDL is still void, given its premature issuance. Company X appealed the FDDA before the CIR on 6 June 2019. However, pending action by the CIR on the appeal, Company X received the WDL on 29 August 2019. Since the WDL was issued while the deficiency tax assessment was still pending appeal with the CIR, it is void and should be of no force and effect.

Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO-II) vs The Commissioner of internal Revenue
Case No. 10145, promulgated 28 February 2023

Electric Cooperatives have permanent exemption from Income Tax.

Facts:

Company M is a non-stock, non-profit electric cooperative with a Certificate of Registration issued by the National Electrification Administration (NEA).

On 2 July 2019, Company M received the FDDA from the BIR, denying its protest to a tax assessment and holding the former liable for deficiency income tax and compromise penalties for taxable year 2015.

On 30 July 2019, Company M filed the present petition for review maintaining its exemption from the payment of income tax under Presidential Decree (P.D.) No. 269, otherwise known as the National Electrification Administration Decree, and the impropriety of the imposition of compromise penalties.

Company M contended that as an electric cooperative, it is exempted from the payment of income tax and such exemption is permanent in character, by virtue of Section 39 of P.D. No. 269, despite its non-registration with the Cooperative Development Authority (CDA). Company M also assails the imposition of compromise penalties and maintains that the same is only proper in cases of settlement of tax liabilities and not when the taxpayer is unwilling to pay the same.

The Commissioner of Internal Revenue argues that Company M's income tax exemption is dependent on its successful registration with the CDA. Even assuming that Company M's exemption was restored, it was already subject to income tax after the 30th year of its registration per Section 39 of P.D. No. 269.

Issue:

Is Company M exempted from the payment of Income Tax as an electric cooperative?

Ruling:

Yes, Company M is exempt from Income Tax.

P.D. No. 269, as amended by Republic Act No. 10351, is the governing law insofar as electric cooperatives are concerned. Company M as an electric cooperative is provided two benefits under P.D. No. 269. *First*, it is entitled to a permanent exemption from payment of income taxes during its existence. *Second*, it is exempted from payment of all national and local taxes, fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, as well as duties or imposts on importation of materials for its operations for a period of ending on 31st day of the December of the 30th year after the date of its organization or when it shall be completely free of indebtedness, whichever comes first.

The first exemption is permanent in character while the second exemption is merely temporary. The first exemption is not dependent on any condition other than the electric cooperative's legal existence hence, the exemption stands as long as Company M operates. Section 12 of RA No. 10351 does not require the electric cooperative to register with the CDA as a condition to enjoy the incentives.

Supreme Court Cases

Lapanday Foods Corporation vs. Commissioner of Internal Revenue
Supreme Court (First Division), G.R. No. 186155, promulgated 17 January 2023

The VAT applies to the sale of services in the course of trade or business which includes transactions incidental thereto. It does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. However, it must be clearly established that the transaction in question must be related or connected with the conduct of the main business activity which is subject to the VAT.

Facts:

Lapanday Foods Corporation (Lapanday) is a domestic corporation engaged in rendering management services. The BIR assessed Lapanday for deficiency taxes covering taxable year 2000. Among others, Lapanday was assessed with deficiency VAT on its interest income arising from intercompany loans.

The Court of Tax Appeals (CTA) upheld the assessment on Lapanday on the ground that the loans it granted to its affiliates are transactions that are incidental to Lapanday's business of providing assistance to its affiliates.

Lapanday now argues before the Supreme Court that the loan transactions were not done in the course of its trade or business and that these transactions are merely accommodation to its parent company and two subsidiaries. It cites RMC No. 43-2003 which provides that "interest income on loan is not subject to VAT unless the lender is a lending investor, dealer in securities or financial institution" as another basis for the non-taxability of its interest income.

Moreover, Lapanday argues that the assessment issued by the BIR for the first quarter of 2000 was beyond the prescriptive period. Lapanday maintains that the prescriptive period should be reckoned from the time of the original filing of the VAT return and not from the filing of the amended return.

Issues:

1. Is the assessment for the first quarter of 2000 already prescribed?
2. Is Lapanday subject to VAT on its interest income arising from intercompany loans granted to its affiliates?

Ruling:

1. Yes, the assessment for the first quarter of 2000 is prescribed.

   Section 203 of the Tax Code provides that the three-year prescriptive period for making an assessment is reckoned from the deadline of the filing of the return or actual date of the filing of the return, whichever is later. The Supreme Court previously ruled that the prescriptive period is reckoned from the filing of the original return unless the amended return is substantially different from the original return.

   In this case, Lapanday filed a Monthly VAT Declaration (BIR Form No. 2550M) on 25 April 2000 or the last day for the filing of Quarterly VAT Returns (BIR Form No. 2550Q) for the first quarter of 2000. To correct such mistake, Lapanday filed its Quarterly VAT Return for the first quarter of 2000 on 4 September 2001.

   Notwithstanding the differences in the forms used by Lapanday in its original and amended filings, the Supreme Court ruled that this does not constitute substantial amendment that would warrant the reckoning of the prescriptive period at the time of the filing of the amended return. While the Monthly VAT Declaration filed on 25 April 2000 is incomplete on the premise that this reflected only the transactions for March, there is no substantial amendment as the accumulated taxable sales/receipts reported in the Quarterly VAT Return filed on 4 September 2001 reflects the same amount of sales/receipts in the Monthly VAT Declarations.

2. No, the interest in the loans extended by Lapanday to its affiliates are NOT subject to VAT.

   While it is incorrect to say that an occasional or isolated transaction cannot be subject to VAT, it should not be applied to the interest income on the loans it granted to its affiliates. Lapanday's loans to its affiliates are not only merely isolated and not for commercial or economic purpose, but there is lack of any showing of a connection between the granting of financial assistance and the primary purpose of providing management services to clients.

   The loans were granted by Lapanday only to accommodate affiliates which did not have existing credit lines with banks and were only granted a few times. As such, whatever interest Lapanday may have earned from the loan accommodations is merely passive and cannot be considered as derived from a commercial or economic undertaking.

   The Supreme Court also noted that the term "assisting" as appearing in Lapanday's primary purpose follows the phrase "managing," "administering," and "promoting." Thus, to "manage" means "to control and direct" while to "administer" is to "manage or conduct." It is logical then to bestow on the term "assisting" in Lapanday's Articles of Incorporation as having a similar meaning as "managing," "administering," or "promoting." Consequently, the granting of a loan to an affiliate as a form of financial assistance, and entered into but a few times, cannot be considered as similar to managing, controlling, or directing the affairs of, or advertising or publicizing, the business of another. The financial assistance in this case could not normally be embraced in the activity of managing or administering the affairs of, or even promoting, a business.

Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.
Supreme Court (First Division), G.R. No. 212727, promulgated 1 February 2023

The completeness of the documents to support a claim for refund should be determined by the taxpayer, and not by the BIR. Otherwise, a taxpayer will be at the mercy of the BIR and the period within which they can elevate their case to the court will never run, to their extreme prejudice.

Facts:

CE Casecnan Water and Energy Company, Inc. (CE Casecnan) filed administrative claims for refund/tax credit with the Bureau of Internal Revenue (BIR) for unutilized input VAT attributable to VAT zero-rated sales for taxable year 2008. However, the claims were not acted upon by the Commissioner of Internal Revenue (CIR), hence, the filing of the petition for review with the CTA.

The CTA granted the refund claim. The CIR now argues before the Supreme Court that the 120-day processing period granted to the BIR to decide on the refund claim has not commenced to run due to the insufficiency of supporting documents. On this basis, the BIR argues that CE Casecnan's petition for review was prematurely filed due to non-observance of the said period.

Issue:

Did CE Casecnan timely file its refund claim for unutilized input VAT with the CTA?

Ruling:

Yes, CE Casecnan timely filed its claims for refund of unutilized input VAT.

Prior to its amendment under Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Act (TRAIN Law), Section 112(C) of the Tax Code provided for the following relevant periods governing claims for refund of input tax attributable to zero-rated or effectively zero-rated sales:

1. The VAT-registered taxpayer must file its application for refund or issuance of a tax credit certificate (TCC) within two years from the close of the taxable quarter when the sales were made;

2. The BIR has 120 days to grant or deny such claim for refund from the date of submission of complete documents in support of the application that has been timely filed within the two-year period; and

3. Any appeal by the taxpayer must be filed with the CTA within 30 days from the receipt of the decision denying the claim or after the expiration of the 120-day period.

Since CE Casecnan filed its claims for refund before the effectivity of the amendments under the TRAIN Law to Section 112 of the Tax Code, the 120-day period under the old text of Section 112 (C) of the Tax Code shall still be applied.

The 120-day period for the CIR to decide should be reckoned from the filing of the said application, regardless of the sufficiency of the supporting documents.

The completeness of the documents to support a claim for refund should be determined by the taxpayer, and not by the BIR. Should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not to submit any document at all, in support of its application for refund, the 120-day period should be reckoned from the filing of the said application. Otherwise, a taxpayer will be at the mercy of the BIR and the period within which they can elevate their case to the CTA will never run, to their extreme prejudice.

The Philippine Stock Exchange, Inc., Bankers Association of The Philippines, Philippine Association Of Securities Brokers and Dealers, Inc., Fund Managers Association of The Philippines, Trust Officers Association of The Philippines, And Marmon Holdings, Inc. vs. Secretary Of Finance, Commissioner Of Internal Revenue, And Chairperson Of The Securities And Exchange Commission
Supreme Court (*En Banc*), G.R. No. 213860, promulgated on 5 July 2022

Despite being one of the inherent powers of the State, the power to tax is not plenary; it is circumscribed by constitutional limitations, in this case, the right to privacy.

Facts:

The Department of Finance (DOF) issued RR No. 1-2014 which requires all withholding agents to submit a digital copy of the alphabetical list (alphalist) of their employees and payees. Under this regulation, the submission of alphalist where the income payments and taxes withheld are lumped into one single amount is not allowed. Subsequently, the CIR issued RMC No. 5-2014, which clarifies the provisions of RR No. 1-2014, requiring submission of Taxpayer Identification Number (TIN) and the complete name of payees, together with the corresponding amount of income and withholding tax.

On this basis, the Securities and Exchange Commission (SEC) issued SEC MC No. 10-2014 directing the Philippine Depository and Trust Corporation (PDTC) and broker dealers to provide the listed companies or their transfer agents an alphalist of all depositary account holders and the total shareholdings in each of the accounts and sub-accounts.

The Petitioners argued that RR No. 1-2014, RMC No. 5-2014, and SEC MC No. 10-14 are unconstitutional for failure to comply with due process, violation of the right to privacy, and for being issued outside the authority of the DOF, the CIR, and the SEC.

Issue:

Are the regulations unconstitutional and invalid for being violative of the right to privacy and issued outside the authority of the DOF, the CIR, and the SEC?

Ruling:

Yes, the subject regulations are unconstitutional and invalid.

While the questioned regulations serve a compelling state interest, which is the effective and proper collection of taxes, the questioned regulations were not narrowly drawn to prevent abuses. There is no assurance that the information gathered and submitted to the listed companies pursuant to the questioned regulations will be protected, and not be used for any other purposes outside the stated purpose. The investors provided their information to the brokers presumably without the intention of sharing such with any other entity, including the investee companies and the BIR.

The collection of information pursuant to the questioned regulations is not necessary for the BIR to carry out its functions. There was no showing that there was a problem or inefficacy with the system prior to the issuance of the questioned regulations.

Moreover, RR No. 1-2014 and RMC No. 5-2014 were issued outside the DOF and BIR's scope of authority since these involved matters outside taxation, which is the use of PCD nominees or securities intermediaries. SEC MC 10-2014 was also issued outside the authority of the SEC since this involved withholding of taxes, which is outside the domain of the SEC.

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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.