Our staff members during the firm's centennial celebration

Client Advisory Letter

July-December 2022

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At a glance

Updates, reiterations, and clarifications on selected topics

Taxes, compliance matters, assessments, and refunds

Premature issuance

FAN dated within 15-day period to reply to PAN violates due process

On 7 January 2009, the taxpayer received a Preliminary Assessment Notice (PAN) from the Bureau of Internal Revenue (BIR). On 22 January 2009, the taxpayer filed its reply to the PAN.

On 12 February 2009, the taxpayer received a Final Assessment Notice (FAN) **dated 14 January 2009** which reiterated the findings in the PAN. Said FAN was duly protested by the taxpayer. Subsequently, the BIR issued a Final Decision on Disputed Assessment which upheld the deficiency tax assessments.

Although the Court of Tax Appeals (CTA) noted that the FAN was issued on 14 January 2009, which was well within the 15-day period given to the taxpayer to reply to the PAN, it nevertheless held that there was substantial compliance with due process requirements on the part of the BIR.

However, the Supreme Court (SC) disagreed with the CTA. To uphold the constitutional rights of the taxpayer, the BIR must strictly observe prescribed procedure in the issuance of assessment notices. The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for the taxpayer and the BIR to settle to the case at the earliest possible time without need for the issuance of a FAN.

In this light, the SC held that there can be no substantial compliance with due process if the BIR completely ignored the 15-day period by issuing the FAN even before the taxpayer was able to submit its reply to the PAN. It seemed that it did not matter to the SC that the FAN, despite being dated or issued on 14 January 2009, was actually served by the BIR on the taxpayer on 12 February 2009 which was more than 20 days after the reply to the PAN was filed.

The SC further held that the filing of a "well-prepared protest letter" to the FAN was of no moment because the fact remains that the BIR violated the taxpayer's right to due process. Hence, the FAN was void and produced no effect.

(G.R. No. 249153, promulgated 12 September 2022)

Premature remedy

Collection cannot be enforced pending appeal

After receiving a Final Assessment Notice (FAN) from the Regional Director (RD), the taxpayer filed its protest. On 26 April 2011, the taxpayer received the RD's Final Decision on Disputed Assessment (FDDA) which denied the protest and upheld the deficiency tax assessments. The FDDA was appealed to the Commissioner of Internal Revenue (CIR) on 6 May 2011.

Despite the pendency of the appeal with the CIR, the Revenue District Office proceeded to enforce collection of the deficiency taxes in the FAN by serving upon the taxpayer a Preliminary Collection Letter (PCL) on 22 September 2011, a Final Notice Before Seizure (FNBS) on 13 January 2012 and a Warrant of Distraint and/or Levy (WDL) on 17 May 2012.

On 14 June 2012, the taxpayer submitted a letter to the RDO requesting for a reconsideration of the WDL. In a letter dated 4 April 2013, the RDO granted the request and gave the taxpayer 60 days to submit supporting documents. On 17 June 2014, the taxpayer received a letter from the RD informing the taxpayer that the case already became final, executory and demandable. On 12 August 2014, the taxpayer received another letter from the RD who, acting on the appeal to the CIR, again declared the case as final, executory and demandable.

On 11 September 2014, which was within 30 days from receipt of the last letter from the RD (*i.e.*, on 12 August 2014), the taxpayer appealed to the Court of Tax Appeals (CTA). The BIR moved to dismiss for lack of jurisdiction since the taxpayer already lost its right to appeal to the CTA. According to the BIR, the 30-day period to appeal to the CTA should be counted from 17 March 2012, the date of receipt of the WDL. Hence, the taxpayer's 11 September 2014 appeal to the CTA was filed out of time.

The Supreme Court agreed with the taxpayer that the counting of the 30-day period to file its appeal to the CTA should be counted from 12 August 2014, the date when it received the second letter from the RD acting on the appeal to the CIR. Here were the points raised by the Supreme Court to justify its decision:

- There was inaction on the taxpayer's appeal of the FDDA to the CIR. Given this circumstance, the taxpayer genuinely chose to await the CIR's final decision on the appeal. The taxpayer exercised the option to wait in good faith as shown by its replies to the PCL and FNBS.
- Since the taxpayer chose to wait, it is immaterial that the appeal to the CTA was filed beyond the 180-day period for the CIR to act on disputed assessments.
- The FDDA cannot be considered as the decision appealable to the CTA because it will render nugatory the taxpayer's remedy to appeal to the CIR the denials (*i.e.*, FDDAs) issued by the latter's authorized representatives (*e.g.*, Regional Directors).
- The PCL, FNBS, WDL and letter received by the taxpayer on 17 June 2014 all emanated from a non-demandable assessment, hence, were all void and without force and effect. These were premature and did not constitute final decisions of the CIR on the appeal.
- The PCL, FNBS, WDL and letter received by the taxpayer on 17 June 2014 were issued on the incorrect premise that delinquency taxes exist. However, the assessment was still pending appeal with the CIR when these issuances were made.
- The 30 June 2014 letter received by the taxpayer on 12 August 2014 which denied the appeal to the CIR is the one appealable to the CTA. In this regard, the taxpayer timely filed its appeal with the CTA on 11 September 2014.

In light of the foregoing, the Supreme Court remanded the case to the CTA for a decision on the merits.

(G.R. No. 231238, promulgated 20 June 2022)

Prejudicial treatment

Revocations of BIR rulings cannot be given retroactive effect

In BIR Ruling No. DA-245-05 dated 7 June 2005, the Bureau of Internal Revenue (BIR) confirmed the taxpayer's opinion that:

1. the conveyance of land and common areas in favor of the condominium corporation with no monetary consideration and no connection to a sale to said condominium corporation does not generate income, hence, is not subject to income tax or creditable withholding tax (CWT); and
2. since the conveyance is not a sale, it is also not subject to the 12% VAT and to the documentary stamp tax (DST) on conveyance of real property.

In 2010, however, the BIR issued Revenue Memorandum Circular (RMC) No. 20-2010 which circularized the revocation of BIR Ruling No. DA-245-05 for being null and void. RMC No. 20-2010 also mentioned that "build-to-own" and "build-your-own" schemes result in the non-payment of income taxes and VAT by the developer.

Consequently, the BIR subjected the taxpayer to a tax audit and then assessed deficiency income tax, VAT, EWT and DST totaling PHP425m that was later reduced to PHP35.67m in the Final Decision on Disputed Assessment.

The taxpayer elevated the case to the Court of Tax Appeals (CTA) and argued that the revocation in RMC No. 20-2010 was invalid in light of Section 246 of the Tax Code which prohibits the retroactive application of any revocation, amendment or modification of rulings when such will be prejudicial to the taxpayer.

The CTA found that the reversal by RMC No. 20-2010 of BIR Ruling No. DA-245-05 prejudiced the taxpayer as the BIR subsequently assessed deficiency taxes on the transaction. In light of such prejudice, RMC No. 20-2010 should not have been given retroactive effect unless any of the exceptions from the principle of non-retroactivity under Section 246 of the Tax Code was present. However, the BIR failed to prove the existence of any of the stated exceptions.

(CTA EB No. 2287, promulgated 14 July 2022)

Export oriented

Export sales that need not be paid in foreign currency to be VAT zero-rated

According to the Court of Tax Appeals (CTA), direct export sales by a taxpayer registered with the Board of Investments (BOI) are VAT zero-rated even if they are not paid for in acceptable foreign currency.

Under Section 106(A)(2)(a)(5) of the Tax Code, the term 'export sales' subject to the VAT zero rate includes those that are considered export sales under the Omnibus

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BIR – Bureau of Internal Revenue
BOC – Bureau of Customs
VAT – Value-Added Tax

Investment Code of 1987 (OIC). In this regard, Article 23 of the OIC provides that direct exportations by BOI-registered enterprises are deemed export sales.

In this light, the CTA ruled that direct export sales by a VAT registered BOI-registered enterprise are not required to be paid for in acceptable foreign currency in order to qualify for the VAT zero rate because no such requirement is prescribed by Section 106(A)(2)(a)(5) of the Tax Code and by Article 23 of the OIC.

Accordingly, direct export sales by a BOI-registered enterprise qualify as VAT zero-rated as long as substantiated by the following:

1. Sales invoice as proof of sale of goods; and
2. Bills of lading, inward letters of credit, landing certificates and other commercial documents to prove actual shipment of goods from the Philippines to a foreign country.

(CTA EB No. 2428, promulgated 22 June 2022)

Car trouble

Misdeclaration results in undervaluation and underpaid taxes and duties

The Court of Tax Appeals (CTA) ruled that there was probable cause to justify the BOC's seizure and/or forfeiture of certain imported luxury vehicles because of:

1. the deliberate failure to disclose the correct model and/or series of the subject vehicles in the Import Entry and Internal Revenue Declaration (IEIRD);
2. the subsequent failure to satisfactorily explain the discrepancies despite notification of the BOC findings; and
3. the apparent undervaluation of the imported vehicles.

The CTA also found that there were misdeclarations in the IEIRDs due to the:

1. failure to completely fill up or supply all the required details of the subject vehicles such as the "No. of Cylinders" and "Engine No.;" and
2. discrepancies between the vehicle descriptions (*i.e.*, models and series) in the IEIRDs and the spot check or 100% physical examination.

The consignee argued that there was no "misdeclaration" because both the models/series reflected in the IEIRDs and the actual models/series ascertained by the BOC per spot check, nevertheless, fell under the same ASEAN Harmonized Tariff Nomenclature (AHTN) tariff heading at 30% rate of duty.

The CTA disagreed and clarified that the term "misdeclared" is not limited to articles that when found will not fall under the same tariff heading as those declared in the IEIRD. The term "misdeclaration" connotes a false, untruthful, erroneous or inaccurate declaration in quantity, quality, description, weight or measurement of goods **resulting in deficiency between the duty and tax that should been paid and the duty and tax actually paid**. In this regard, the CTA found that the subject vehicles were undervalued because the actual models/series were higher and considerably more valuable than the models/series that were misdeclared in the IEIRDs. This undervaluation resulted in the underpayment of taxes and duties. Hence, the seizure of the imported luxury vehicles on the ground of misdeclaration was proper.

(CTA Case No. 9851, promulgated 4 August 2022)

Timing difference

Late tax payment subject to surcharge despite timely filing of return

The deadline for filing the quarterly VAT return (BIR Form No. 2550Q) for the 4th quarter (Q4) of 2013 was 25 January 2014. Since 25 January 2014 fell on a Saturday, the statutory deadline moved to 27 January 2014, the very next working day.

On 24 January 2014, the taxpayer filed its quarterly VAT return for Q4 2013 but without payment. However, the VAT was paid on 28 January 2014. Since the VAT payment was made after 27 January 2014, the BIR considered the same as late and subsequently assessed a 25% surcharge, 20% interest per annum and compromise penalty.

The taxpayer agreed to pay interest and compromise penalty but sought abatement of the surcharge. It argued that under Section 248(A)(1) of the Tax Code, the surcharge may be imposed only if the taxpayer failed to both file the return and pay the tax on time. Since it was able to file the return on time, the surcharge was unjustified despite the late payment.

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BIR – Bureau of Internal Revenue
BOC – Bureau of Customs
BOI – Board of Investments
CTA – Court of Tax Appeals
VAT – Value-Added Tax

The CTA disagreed with the taxpayer. Under Section 114 of the Tax Code, both the VAT return must be filed, and the VAT must be paid on or before the deadline. The filing of the tax return ahead of the date of tax payment would still be in accordance with the "pay-as-you-file" principle as long as the tax is paid on or before the deadline. Furthermore, the applicable Tax Code provision for the surcharge imposition is not Section 248(A)(1) but Section 248(A)(4) which pertains to the "(f)ailure to pay the full or part of the amount of tax shown on any return required to be filed." In light of the foregoing, the mandatory surcharge imposition was justified.

(CTA EB No. 2415, promulgated 14 September 2022)

Conditions apply

When reimbursements for expenses advanced are considered non-taxable

A company engaged in the manufacture and sale of steel bars advances the payment of hauling expenses incurred in the delivery of steel bars to customers. When the customers reimburse the company for the hauling expenses, such reimbursements are not subject to VAT by the company which consequently issues acknowledgment receipts.

According to the CTA, the reimbursement of actual expenses will not be subject to VAT if the following conditions are satisfied:

1. the payment is pure reimbursement of cost without any-mark-up;
2. the input VAT is not claimed by the advancing party, the billing being in the name of the accommodated party (*e.g.*, customer); and
3. the payment of reimbursement is not covered by VAT official receipts/invoices.

Since the company was not able to establish the above conditions, the reimbursement of hauling charges should have been subjected to VAT. Hence, the related deficiency VAT assessment against the company was justified.

(CTA EB Nos. 2410 and 2412, promulgated 13 September 2022)

Glossary

BIR – Bureau of Internal Revenue
CTA – Court of Tax Appeals
RA – Republic Act
VAT – Value-Added Tax

Dispensable requisite

DOE Certificate of Endorsement not required for RE developers

Section 15(g) of the Renewable Energy (RE) Act of 2008, in relation to Section 108(B)(3) of the Tax Code, provides that the local supply of goods and services to RE developers for the development, construction and installation of plant facilities are entitled to the VAT zero rate. Hence, the sale of services to an RE developer is subject to the VAT zero rate.

In an input VAT refund case, the Court of Tax Appeals Third Division denied VAT zero rated treatment because the claimant failed to present a Certificate of Endorsement (COE) issued by the Department of Energy (DOE) to its RE developer client.

However, this denial was reversed by the CTA *En Banc* which reasoned as follows:

- The COE is not a requirement for entitlement to the VAT zero rate. It is only applicable to the duty-free incentive of RE developers on the importation of RE machinery, equipment and materials. Other incentives such as the VAT zero-rated status of local purchases of goods and services by RE developers make no reference to a DOE endorsement.
- The DOE does not have a mechanism or process for the issuance of COE for VAT zero-rating purposes.
- RE developers are automatically qualified to avail of the incentives in RA No. 9513 after securing the DOE Certificate of Registration (COR). See Department Circular No. DC 2021-12-0042.

In light of the foregoing, a supplier of an RE Developer is not required to submit a DOE COE to avail of the VAT zero-rating incentive. The supplier only needs to show that it rendered services to an RE Developer.

(CTA EB No. 2479, promulgated 14 October 2022)

Flexible interest

FAN that provides for adjustment of interest in case of delayed payment is valid

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (G.R. No. 215957), the Supreme Court (SC) declared a Final Assessment Notice (FAN) void because it did not comply with the due process requirement that it contain a demand for payment. In this regard, the SC found that the FAN indicated neither a definite amount of tax liability nor due dates. The FAN merely stated that

"the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004."

In a recent case decided by the CTA, the latter held that the above due process requirement is not violated if the FAN merely reminded the taxpayer to "(p)lease take note that the interest and the total amount due will have to be adjusted if paid beyond the date specified therein." According to the CTA, it is unfair to fault the Bureau of Internal Revenue for reminding the taxpayer of the consequences of a delayed payment of deficiency tax assessments.

(CTA Case No. 10221, promulgated 3 November 2022)

Double claim

Excess input VAT carry-over should be disallowed in a deficiency VAT assessment

In a deficiency VAT assessment, the CTA ruled that excess input VAT carried forward to succeeding periods should be disallowed by the Bureau of Internal Revenue unless the taxpayer proves that it was not able to utilize the input VAT during the succeeding periods. The CTA reasoned as follows:

- The disallowance of excess input VAT carry-over is not a disallowance per se. It is applied in order not to disrupt the amount of the deficiency VAT assessment which can be eliminated if the carry-over is not disregarded.
- Without the disallowance, the taxpayer will have to amend subsequent VAT returns to remove the input VAT carry-over that was utilized against the deficiency VAT assessment.
- The taxpayer is prevented from utilizing the same input VAT twice – during the succeeding periods and during the deficiency VAT assessment.

(CTA Case No. 10221, promulgated 3 November 2022)

Agent

Appointment of agent does not automatically constitute doing business

One of the elements for qualification for VAT zero rating under Section 108(B)(2) of the Tax Code is that the recipient of the services is a foreign corporation which is doing business outside the Philippines.

In a case for input VAT refund before the Court of Tax Appeals (CTA), the Commissioner of Internal Revenue argued that VAT zero-rating does not apply when the foreign corporation (recipient of services) has an appointed agent in the Philippines. However, the CTA disagreed that such constituted doing business in the Philippines, reasoning as follows:

- There is no showing that the agent was continuing the shipping activities of the foreign corporation in the Philippines. The agent was authorized as such only for purposes of screening Filipino seamen and engineers for employment onboard the vessels of the foreign corporation.
- The foreign corporation is not doing business in the Philippines because it did not undertake any of the activities enumerated in Section 1(f) of the Implementing Rules and Regulations of the Foreign Investment Act of 1991.
- As held by the Supreme Court in *Cargill, Inc. vs. Intrata Strata Assurance Corporation* (G.R. No. 168266), activities of a foreign corporation in the Philippines that do not create earnings or profits do not constitute doing business in the Philippines.

(CTA EB Nos. 2481 and 2482, promulgated 22 December 2022)

Counting the days

30-day appeal period counted from denial due to inaction, not from FDDA issuance

After receiving the Final Assessment Notice (FAN), the taxpayer filed a request for reconsideration on 21 March 2016. On 27 October 2017, the taxpayer received the Regional Director's Final Decision on Disputed Assessment (FDDA) which denied the request for reconsideration.

On 25 November 2017, the taxpayer appealed the FDDA to the Commissioner of Internal Revenue. Due to the alleged inaction of the latter, the taxpayer filed a Petition for Review with the Court of Tax Appeals (CTA).

However, the CTA dismissed the Petition for Review for being filed out of time. Section 228 of the Tax Code provides that if a protest (*e.g.*, request for reconsideration) is not acted upon within 180 days from the filing of the protest, the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period. Accordingly, the taxpayer should have filed the Petition for Review within 30 days from 17 September 2016 which is the end of the 180-day period counted

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CTA – Court of Tax Appeals
VAT – Value-Added Tax

from 21 March 2016, the date of filing of the request for reconsideration.

According to the CTA, the lapse of the 180-day period on 17 September 2016 already constituted a deemed denial of the protest. Hence, the issuance of the FDDA by the Regional Director in 2017 which was already beyond the 180-day period and the subsequent appeal thereof to the CIR did not grant a fresh 180-day period to the latter to act on such appeal.

(CTA EB No. 2526, promulgated 13 December 2022)

Import requirement

SSDTs are considered sufficient evidence to prove input VAT from importations

Under Section 4.110-8(a)(1) of Revenue Regulations No. 16-2005, input VAT from importations must be substantiated and supported by import entry or other equivalent documents showing actual payment of VAT on the imported goods. According to the Court of Tax Appeals, such provision, however, does not prescribe an all-inclusive list of requirements in substantiating input VAT to be creditable against output VAT.

What is essential is that the document shows actual payment of VAT on the imported goods. Accordingly, the most crucial document to substantiate input VAT is the Statement of Settlement of Duties and Taxes (SSDT). If the SSDT is presented, all other importation documents or any defect or infirmities therein are dispensable.

(CTA Case No. 10113, promulgated 23 November 2022)

Foreign exchange

Guidelines for the exchange of rulings with foreign tax administrations

The Secretary of Finance issued guidelines and procedures for the spontaneous exchange of taxpayer-specific rulings between the Bureau of Internal Revenue (BIR) and tax authorities in foreign jurisdictions which include countries of residence of immediate and ultimate parent companies. Covered rulings include past and future rulings pursuant to pre-defined periods.

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BIR – Bureau of Internal Revenue
CTA – Court of Tax Appeals
RR – Revenue Regulations
VAT – Value-Added Tax

Said exchanges are those made pursuant to international exchange of information agreements such as Double Taxation Agreements (DTAs), Tax Information Exchange Agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which provide the legal conditions under which such exchanges should take place.

In the Philippines, the legal basis for the exchange of taxpayer-specific rulings, whether it is upon request, automatic or spontaneous, is the Exchange of Information (EOI) article of DTAs.

The guidelines and procedures provide for the following, among others:

- The International Tax Affairs Division (ITAD) of the BIR, through its EOI Section, is responsible for exchanging taxpayer-specific rulings with the foreign tax authority of the potential exchange jurisdiction.
- Rulings within scope
    a. Rulings related to preferential regimes;
    b. Cross-border unilateral Advance Pricing Arrangements and any other cross-border unilateral tax rulings covering transfer pricing (TP) or the application of TP principles;
    c. Cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country issuing the ruling;
    d. Permanent establishment (PE) rulings; and
    e. Related party conduit rulings.
- The template for information exchange is attached as Annex A of RR No. 11-2022.
- Potential exchange jurisdictions that depend on the type of ruling concerned
- Past rulings that fall within the above scope pertain only to PE rulings concerning the presence or absence of a PE of a foreign enterprise in the Philippines that were issued either:
    a. On or after 1 January 2015 but before 1 September 2017; or
    b. On or after 1 January 2012 but before 1 January 2015, provided they were still effective as of 1 January 2015.
- The EOI Section of the ITAD is responsible for receiving rulings spontaneously exchanged by treaty partners. If the rulings received will aid tax

investigations, the same shall be forwarded to the concerned Revenue District Office.

(Revenue Regulations No. 11-2022, published on 8 July 2022)

Dispute resolution

Guidelines for requesting Mutual Agreement Procedure assistance

Double Taxation Agreements (DTAs) have Mutual Agreement Procedure (MAP) articles which allow the competent authorities of the contracting states to resolve disputes arising from differences or difficulties in tax treaty applications or interpretations. The MAP also gives taxpayers another venue to resolve disputes involving tax treaties.

In this regard, the Secretary of Finance issued guidelines and procedures for requesting MAP assistance. These guidelines and procedures provide for the following:

- Typical scenarios requiring MAP assistance
  a. The withholding tax rate is beyond the maximum rate fixed under the tax treaty;
  b. A taxpayer is deemed a resident of both of Philippines and the other contracting state, which triggers the tiebreaker rules;
  c. A nonresident is taxed despite not having a permanent establishment or fixed base;
  d. A nonresident with a PE has been or will be taxed not in accordance with the provisions of attributability;
  e. A taxpayer is uncertain whether a specific item of income is covered by the DTA or is uncertain of the income characterization or classification; and
  f. A taxpayer is subject to additional tax because of a transfer pricing adjustment.
- The MAP Team is composed of the Competent Authority for the Philippines (*i.e.*, BIR) and the Offices under the Competent Authority (*i.e.*, Rulings and MAP Section of the ITAD, Assistance Commissioner for Legal Service and Deputy Commissioner for Legal Group).
- How to initiate a MAP Request
  a. Request for pre-filing consultation
  b. Submission of a valid MAP request
  c. Minimum information required in the MAP request
  d. Venue of presentation of MAP request
  e. Period to file the MAP request which is within two (2) to three (3) years from the first notification of the action resulting in taxation not in accordance with the DTA
  f. Manner of submission
  g. Fees
- In the Philippines, the filing period for the MAP request should be counted from the date of receipt of a Final Assessment Notice, the ruling denying the claim for tax treaty benefit, or any equivalent document.
- MAP Process
  a. Preliminary assessment
  b. Analysis of a MAP case
  c. Consultations between the MAP team and other BIR offices
  d. Consultations between competent tax authorities
  e. Negotiation of bilateral or multilateral advance pricing arrangements
  f. Authority of MAP team
  g. Resolution of a MAP case
  h. Competent authority agreement
  i. Timely implementation of MAP agreements
  j. Interaction with domestic remedies
    1) Judicial or other administrative appeals vs. MAP
    2) Court decisions cannot be overruled through MAP
    3) Effect of decisions by foreign courts
    4) Suspension of tax collection
  k. Withdrawal of MAP case

Glossary

BIR – Bureau of Internal Revenue
ITAD – International Tax Affairs Division
PE – Permanent Establishment

l. Transfer pricing adjustment under DTAs

- Audit Settlement

(Revenue Regulations No. 10-2022, published on 8 July 2022)

Mission ready

Lifting the suspension on the Tax Compliance Verification Drive

Revenue Memorandum Circular No. 77-2022 dated 30 May 2022 suspended all field audits and other field operations of the BIR in relation to taxpayer examinations and verifications. In this regard, the conduct of the Tax Compliance Verification Drive (TCVN) was suspended.

The Commissioner of Internal Revenue recently lifted the suspension of the Tax Compliance Verification Drive in order to expand the tax base, enhance tax compliance and investigate or verify complaints for alleged violations. Hence, the suspension of the issuance of Mission Orders, insofar as authorizing Revenue Officers to conduct the TCVN, is lifted effective immediately.

However, the issuance of Mission Orders for purposes other than the conduct of the TCVN remains suspended until further notice.

(Revenue Memorandum Circular No. 115-2022, issued 28 July 2022)

Back to office

Authority to implement 70:30 work-from-home arrangement for the IT-BPM sector

The BIR circularized FIRB Resolution No. 17-22 which grants the authority to implement a 70:30 work-from-home (WFH) arrangement for registered business enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) sector from 1 April 2022 to 12 September 2022 only. RBEs in the IT-BPM sector refers only to those providing services in line with the Strategic Investment Priority Plan.

The 70:30 WFH arrangement means that the number of employees working from home shall not exceed 30% of the RBE workforce while the remaining 70% shall render work within the geographical boundaries of the concerned Ecozone or Freeport Zone.

The total workforce pertains to the total number of employees directly or indirectly engaged in the registered project or activity, excluding third-party contractors rendering janitorial, security or other services.

If the 30% threshold is exceeded, the concerned RBE shall not be entitled to avail of the fiscal and non-fiscal incentives for the month of non-compliance.

(Revenue Memorandum Circular No. 102-2022, issued 19 July 2022)

Glossary

BIR – Bureau of Internal Revenue
FIRB – Fiscal Incentives Review Board
VAT – Value-Added Tax

Prescribed template

Sworn Declaration as a requirement for the VAT zero rating of purchases

The BIR has issued the prescribed template for the Sworn Declaration to be executed by Registered Business Enterprises (RBEs) in relation to Q&A No. 36 of Revenue Memorandum Circular No. 24-2022. The Sworn Declaration states that the goods and/or services being purchased shall be used directly and exclusively in the registered project or activity.

In order to avail of the VAT zero rate, the Sworn Declaration should be provided to the RBE's supplier before the sale transaction.

(Revenue Memorandum Circular No. 84-2022, issued on 30 June 2022)

Terms of service

Removing the 30-day period to serve Letters of Authority

In light of a Court of Tax Appeals decision invalidating a Letter of Authority because it was served after 30 days from date of issuance in violation of the requirement in Item VIII of Revenue Audit Memorandum Order (RAMO) No. 1-2000, the BIR clarified that such requirement has already been deleted by RAMO No. 1-2020.

Accordingly, the service of an electronic Letter of Authority (eLA) after the 30-day period shall not constitute an excuse for the taxpayer to refuse its service or to question its validity. In other words, an eLA served after the 30-day period is still valid and enforceable; provided, however, that the audit is completed within 180 days with respect to Revenue District Office cases and 240 days with respect to Large Taxpayers cases.

Nevertheless, the deletion of the 30-day period shall not be an excuse for the concerned Revenue Officers to delay the service of the eLA.

(Revenue Memorandum Circular No. 82-2022, issued on 30 June 2022)

Delegated task

Authority to sign Assessment Notices and Reports of Investigation under the LTS

Under Revenue Delegation Authority Order (RDAO) No. 4-2018, Commissioner Caesar R. Dulay further delegated his authority to sign Final Assessment Notices and Formal Letters of Demand (FAN/FLD) to the Deputy Commissioner of Operations.

Said delegation of authority has been repealed by the incumbent Commissioner Lilia Catris Guillermo and reverted to the Assistant Commissioner of the Large Taxpayers Service (LTS) or, in the latter's absence, the Head Revenue Executive Assistant of the LTS.

However, the authority to sign and approve Final Decisions on Disputed Assessments remains with the Commissioner of Internal Revenue.

(Revenue Delegation Authority Order No. 7-2022, dated 12 July 2022)

On location

Penalties for IT-BPM RBEs exceeding the 30% threshold for WFH employees

In Revenue Memorandum Circular No. 102-2022, the BIR circularized FIRB Resolution No. 17-22 which allowed registered business enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) sector to implement a 70:30 work-from-home (WFH) arrangement from 1 April 2022 to 12 September 2022 only.

The 70:30 WFH arrangement means that the number of employees working from home shall not exceed 30% of the RBE's total workforce while the remaining 70% shall render work within the geographical boundaries of the concerned Ecozone or Freeport Zone. The total workforce pertains to the total number of employees directly or indirectly engaged in the registered project or activity, excluding third-party contractors rendering janitorial, security or other services.

In this light, the BIR clarified that if the 30% threshold is exceeded, the RBE's income tax incentives shall be suspended during the month when the violation was committed. In this case, the RBE shall pay a penalty equivalent to the regular 25% or 20% income tax for said month.

The penalty shall be remitted using BIR Form No. 0605 by choosing the button "Others" under "Voluntary Payment" and indicating the phrase "Penalty pursuant to FIRB Res. No. 017-22". The tax type code and ARC shall be "IT" and "MC 200", respectively.

In any case, the RBE shall continue filing its income tax returns following the usual procedure as if no violation was committed. RBEs under the ITH regime shall file BIR Form No. 1702-EX while RBEs under the GIT regime or with mixed transactions shall file BIR Form No. 1702-MX.

(Revenue Memorandum Circular No. 120-2022, issued 18 August 2022)

Foreign affairs

Processing of the online registration of nonresident foreign corporations

Under the Online Registration and Update System (ORUS) project of the BIR, taxpayers may register and update their BIR registration online. However, the ORUS shall be initially available only to nonresident foreign corporations (NRFCs).

Here are the policies and procedures that should be observed by NRFCs regarding their online registration:

- NRFCs shall be issued a TIN and shall be registered with Revenue District Office (RDO) No. 39.
- All applications shall be submitted through ORUS and processed online by RDO No. 39. Walk-in applicants shall be guided and assisted by the concerned Registration Officer to use the BIR eLounge facility.
- No application shall be processed manually except during system unavailability or downtime as per advisory.
- Prior to registration and securing a TIN, NRFCs are required to create an account in ORUS online via

Glossary

BIR – Bureau of Internal Revenue
FIRB – Fiscal Incentives Review Board
GIT – Gross Income Tax
ITH – Income Tax Holiday
TIN – Tax Identification Number

https://orus.bir.gov.ph or by visiting www.bir.gov.ph and clicking the ORUS icon under eServices.

- All documentary requirements should be uploaded and submitted online in Portable Document Format (PDF).
- Applications received with complete documentary requirements shall be processed within three (3) days from receipt.
- The Client Support Section of the RDO shall process and review the applications. The NRFC shall be notified of the approval, resubmission or denial of the application. In case of resubmission, the NRFC shall login and comply within 15 days from receipt of the email.
- The application may be denied in the following cases:
    a. Unclear or unjustified purpose of TIN application;
    b. Applicant has existing TIN;
    c. Incomplete, expired, unsigned, falsified or dubious documentary requirements;
    d. Wrong attachments;
    e. Applicant is a resident foreign corporation; or
    f. The email address used is dubious.
- Approved applications shall be issued a TIN through ORUS and the NRFC shall receive its TIN via email.
- Certificates of Registration shall not be issued to NRFCs not engaged in business.

(BIR Operations Memorandum No. 61-2022, dated on 29 July 2022)

Taking stock

Income tax implications of equity-based compensation of employees

The BIR issued guidelines, procedures and requirements for the income tax treatment of equity-based compensation. Under the regulations, equity-based compensation covers:

1. all types of employee equity schemes such as stock options, restricted stock units, stock appreciation rights and restricted share awards;
2. which may or may not pertain to the shares of stock of the grantor;
3. which all have the common feature of being granted to existing employees of the grantor as a performance incentive for services rendered; and
4. are typically dependent on performance, outstanding business achievements and exemplary organizational, technical or business accomplishments.

According to the BIR, equity grants are awarded to employees for services rendered by the latter. Hence, equity grants that are availed of are considered compensation subject to income tax and consequently, withholding tax on compensation. This tax implication arises regardless of whether the employee occupies a rank-and-file, or supervisory or managerial position.

The above regulations repeal the inconsistent provisions of earlier BIR issuances, including Revenue Memorandum Circular No. 79-2014.

(Revenue Regulations No. 13-2022, published 14 October 2022; Department of Finance Opinion No. 16-2022, dated 6 October 2022)

Legal aid

Implementing the tax incentives under the Free Legal Assistance Act of 2010

Policies and guidelines have been issued by the BIR for the availment by lawyers or general professional partnerships (GPPs) of the additional allowable deduction under the Free Legal Assistance Act of 2010 (Republic Act No. 9999). Said deduction is equivalent to the lower of:

1. The amount that could have been collected for the actual free Legal Services rendered; or
2. 10% of the gross income derived from the actual performance of the legal profession.

Actual free Legal Services shall be exclusive of the minimum 60-hour mandatory legal aid services rendered to indigent litigants as required under the Rule of Mandatory Legal Aid Services for Practicing Lawyers under Bar Matter No. 2012.

In order to avail of the incentive, the following shall be attached to the income tax return of the lawyer or GPP:

Glossary

TIN – Tax Identification Number

1. Certification from the Public Attorney's Office or accredited association of the Supreme Court (SC) indicating that:
   a. The Legal Services to be provided are within the services defined by the SC;
   b. The agencies cannot provide the Legal Services to be provided by private counsel;
   c. The Legal Services were actually undertaken; and
   d. For accredited associations of the SC, the certification should also specify the number of hours actually provided in the provision of Legal Services;
2. Accomplished BIR Form No. 1701 (lawyers) or BIR Form No. 1702-EX (for GPPs), particularly, Schedules 5 and 2, respectively; and
3. Sworn Statement by the lawyer or managing partner of the GPP as to the amount that could have been collected for the actual free legal service.

(Revenue Regulations No. 12-2022, published 20 September 2022)

Employee discrimination

Only HMO costs for employees directly involved in operations are VAT zero-rated

The BIR issued the following clarifications regarding the VAT treatment of Health Maintenance Organization (HMO) costs incurred by registered export enterprises (REEs):

- HMO plan costs for employees who are directly involved in the operations of registered projects or activities and forming part of their compensation package qualify for the VAT zero-rate.
- However, HMO plan costs for employee dependents and for employees who are not directly involved in the operations of registered projects or activities and forming part of their compensation package do not qualify for the VAT zero-rate.

To ensure that only qualified HMO plan costs are subjected to VAT zero rating, REEs must provide their HMO suppliers with detailed information on the HMO plans acquired using the format attached as Annex A of RMC No. 137-2022. This Annex A is also required to be submitted by HMO suppliers with their VAT zero rating applications.

(Revenue Memorandum Circular No. 137-2022, issued on 14 October 2022)

Jumping ship

IT-BPM companies are allowed transfer to BOI to adopt 100% WFH arrangements

The Fiscal Incentives Review Board (FIRB) issued FIRB Resolution No. 26-22 extending until 31 December 2022 the effectivity of FIRB Resolution No. 17-22 which allows registered business enterprises (RBEs) in the IT-BPM sector to adopt work-from-home (WFH) arrangements up to 30% of their total workforce without adversely affecting their tax incentives.

FIRB Resolution No. 26-22 also allows RBEs in the IT-BPM sector to transfer their registration to the Board of Investments (BOI) until 31 December 2022 and then adopt a 100% WFH arrangement. However, the monitoring of these transferee RBEs' compliance and availment of remaining incentives shall remain with the concerned investment promotion agency (IPA).

Here are the guidelines for the transfer of registration:

1. The RBEs shall signify to the concerned IPA their intention to transfer to the BOI.
2. The concerned IPA shall prepare an endorsement to the BOI.
3. The BOI shall issue the BOI Certificate of Registration (CR) indicating the remaining tax incentives.
4. The current Cost Benefit Analysis for new projects shall no longer be applied to transferee RBEs.
5. The concerned IPA shall monitor compliance of transferee RBEs and submit a report to the BOI in relation to the BOI CRs issued.

After the lapse of the remaining period of tax incentives, the existing registered project of the transferee RBE shall not be entitled to additional incentives. However, it may be eligible if the activity is listed in the Strategic Investment Priority Plan and there is a new investment or qualified expansion.

(Revenue Memorandum Circular No. 136-2022, issued on 14 October 2022)

Glossary

BIR – Bureau of Internal Revenue
IT-BPM - Information Technology and Business Process Management
RMC – Revenue Memorandum Circular
VAT – Value-Added Tax

eBIRForms facility

Availability of the updated version of eBIRForms package

The new Offline eBIRForms Package Version 7.9.3 is already available and may be downloaded from www.bir.gov.ph. The new version has the following modifications:

- Additional alphanumeric tax codes (ATCs) in BIR Form No. 0605 to be used by International Carriers in paying income tax, percentage tax and documentary stamp tax, in reference to RMO No. 37-2022;
- Revised Terms of Service Agreement (TOSA); and
- Required official email address of the taxpayer to be provided in the profile page which shall be used as an additional mode of serving BIR orders, notices, letters, communications and other processes.

(Revenue Memorandum Circular No. 131-2022, issued on 28 September 2022)

Mission orders

Lifting the suspension of BIR enforcement activities and operations

In Revenue Memorandum Circular (RMC) No. 77-2022, the Commissioner of Internal Revenue (CIR) suspended all BIR field audit and field operations covered by outstanding Mission Orders (MO) for the conduct of enforcement activities and operations. She also prohibited the issuance of new MOs authorizing said activities and operations.

However, the above suspension and prohibition have been subsequently lifted and removed by the incumbent CIR in RMC No. 127-2022.

(Revenue Memorandum Circular No. 127-2022, issued on 7 September 2022)

Posting notice

Replacing the "Ask for Receipt" notice with the "Notice to Issue Receipt/Invoice"

The BIR has prescribed the following policies, guidelines and procedures in the issuance and use of the new BIR Notice to the Public, "Notice to Issue Receipt/Invoice (NIRI)":

- The following shall be issued the NIRI:
  a. New Business Registrants head office and branches; and
  b. Online sellers and merchants, vloggers, social media influencers and online content creators earning income from platform and/or advertising.
- The "Ask for Receipt" Notice issued by the Revenue District Office or Large Taxpayers Division to taxpayers under RR No. 7-2005 shall be valid until 30 June 2023 and shall be replaced by the NIRI on a staggered basis as follows:

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

- All registered taxpayers requesting for replacement of their old "Ask for Receipt" Notice must update their registration information before the release of the NIRI. For this purpose, a designated official email address shall be required.

(Revenue Memorandum Order No. 43-2022, issued on 29 September 2022)

Under surveillance

BIR operations against unlicensed, illicit and unauthorized articles subject to excise tax

The following policies, guidelines and procedures have been issued with respect to the BIR's conduct of enforcement operations, forfeiture and prosecution of cases in relation to the unlicensed, illicit or unauthorized production, importation, trade sale or possession of excisable articles including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances and removable fixture used for their production and the use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags:

- A BIR STRIKE GROUP composed of two teams under the Deputy Commissioner for Operations shall

Glossary

BIR – Bureau of Internal Revenue
RMO – Revenue Memorandum Circular
RR – Revenue Regulations

be created for the purpose of conducting surveillance and/or enforcement activities.

- The surveillance and/or enforcement activities shall be covered by Mission Orders and shall consist of covert and/or overt surveillance. Covert surveillance shall be conducted to initially evaluate the factual circumstances to determine reasonable ground to believe that there is a Tax Code violation.
- The SUBJECT of surveillance generally comes from confidential information or denunciation complaint filed by informers, private individuals or entities and also from referrals from other government agencies such as the BOC, NBI, PNP, NTA and LGUs.
- Revenue officers from the BIR STRIKE GROUP shall perform the following procedures during surveillance:
    a. Observe business operations and develop leads from other sources such as neighboring establishments, additional outlets, plant/factory, warehouse or branches of the SUBJECT;
    b. Discreetly research the suppliers and buyers, and volume of deliveries made by the SUBJECT;
    c. Determine any violation of the Tax Code or BIR rules and regulations; and
    d. Submit a report within five (5) days from completion of activity.
- Enforcement actions may consist of any or all of the following:
    a. Inventory stock-taking which requires a Mission Order;
    b. Apprehension or seizure of articles, machinery, apparatus, etc.;
    c. Forfeiture and destruction of seized articles, machinery, apparatus, etc.;
    d. Issuance and services of a preliminary and/or final assessment notice pursuant to a valid Letter of Authority; and
    e. Filing of civil and/or criminal cases under the Run After Tax Evaders (RATE) Program.

(Revenue Memorandum Order No. 40-2022, issued on 29 September 2022)

Not in business

Halting the issuance of Tax Verification Notices for certain estate tax cases

The BIR is discontinuing the issuance of Tax Verification Notices (TVNs) for estate tax cases where the decedent has no registered business. This is pursuant to the Ease of Doing Business Act (Republic Act No. 11032) in relation to the processing of applications for Certificates Authorizing Registration for the transfer of properties through succession.

(Revenue Memorandum Order No. 41-2022, issued on 29 September 2022)

Carrier compliance

Amending the guidelines for International Carriers Special Certificate applicants

The following guidelines have been issued regarding the online application for the International Carriers Special Certificate (ICSC) and the electronic submission of required documents:

- New ICSC applicants shall register and secure their Taxpayer Identification Number (TIN) online via the Online Registration and Update System (ORUS) at https://orus.bir.gov.ph where the following should be uploaded:
    a. Apostilled official document issued by an authorized government body that includes the name of the non-individual and the principal office address;
    b. Apostilled board resolution, secretary's certificate or equivalent document; and
    c. Any government-issued identification of the authorized representative and/or principal signatory.

Glossary

BIR – Bureau of Internal Revenue
BOC – Bureau of Customs
LGU – Local Government Unit
NBI – National Bureau of Investigations
NTA – National Tobacco Administration
PNP – Philippine National Police
TIN – Taxpayer Identification Number

- In case of system downtime or unavailability of ORUS, the ICSC applicant shall register with Revenue District Office No. 39 through electronic submission of applicable using the NewBizReg portal under the eServices icon or via email.
- The Agent shall be responsible for registration of the ICSC applicant (principal) it represents and for ensuring that there is no existing TIN.
- The designation of an email address is mandatory and should be that of the ICSC applicant's official and permanent email address – not of the Agent's. Such designated email address shall be the official email address.
- In case of change of Agent, the new Agent shall update the ICSC applicant's registration information.
- The following taxes shall be paid by the ICSC applicant:
    a. 2½% income tax on Gross Philippines Billings, unless exempted or subject to a lower rate under an applicable tax treaty or international agreement to which the Philippines is a signatory or under the basis of reciprocity; and
    b. 3% percentage tax of gross receipts.

    Gross Philippine Billings and gross receipts shall be computed using the exchange rate at the time of payment.
- Filing of BIR Forms
    a. The agent shall file the payment forms for the ICSC applicant using the TIN and name of the ICSC applicant.
    b. Before the application for ICSC, the income tax and percentage tax shall be separately paid using BIR Form No. 0605 indicating the appropriate Alphanumeric Tax Code.
    c. The ICSC applicable may prepare and file BIR Form No. 0605 via the eBIRForms facility.
- The taxes may be paid using any of the following facilities:
    a. Development Bank of the Philippines Pay Tax Online (for Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card holders);
    b. Land Bank of the Philippines (LBP) Link.BizPortal (for taxpayers (1) with LBP ATM accounts, (2) who hold BancNet ATM/Debit/Prepaid cards, and (3) who are RCBC, Robinsons Bank, Union Bank, BPI, PSBank and Asia United Bank depositors utilizing PCHC PayGate or PESONet facility);
    c. Union Bank of the Philippines (UBP) Online/The Portal Payment Facilities (for UBP account holders or UPAY via InstaPay for individual non-UBP account holders); or
    d. GCash, PayMaya or MyEG.
- The ICSC shall be issued by the Regional Director of Revenue Region No. 7A upon application and subsequent evaluation of the documentary requirements, and only upon payment of the 2½% income tax and the 3% percentage tax.

(Revenue Memorandum Order No. 37-2022, issued on 16 September 2022)

MERALCO refunds

Amending the withholding tax regulations in relation to MERALCO obligations

The Secretary of Finance amended Section 2.57.2(P) of Revenue Regulations No. 2-1998, otherwise known as the Consolidated Withholding Tax Regulations, as follows:

Income payment	CWT rate
Gross amount of MERALCO refund to non-residential customers arising from ERC Case Nos. 2020-043 RC, 2010-069 RC, 2011-088 RC, 2012-054 RC, 2013-056 RC and 2014-029 RC Orders	15%
Gross amount of interest paid directly to customers or deducted against customers' billings pertaining to meter deposit refunds in accordance with Rules to Govern Refund of Meter Deposits to Residential and Non-Residential Customers	10% for residential and general service customers whose monthly electricity exceeds 200 kwh as classified by MERALCO

Glossary

BIR – Bureau of Internal Revenue
ERC – Energy Regulatory Commission

Income payment	CWT rate
Gross amount of interest paid directly to customers or deducted against customers' billings pertaining to meter deposit refunds in accordance with Rules to Govern Refund of Meter Deposits to Residential and Non-Residential Customers	15% for non-residential customers
Gross amount of interest paid directly to customers or deducted by other electric Distribution Utilities in accordance with ERC Resolution No. 12-2016 governing meter deposit refunds	10% for residential and general service customers whose monthly electricity exceeds 200 kwh as classified by MERALCO
Gross amount of interest paid directly to customers or deducted by other electric Distribution Utilities in accordance with ERC Resolution No. 12-2016 governing meter deposit refunds	15% for non-residential customers

(Revenue Regulations No. 15-2022, published 12 December 2022)

Vaping tax

Implementing the law on vaporized nicotine and non-nicotine, and novel tobacco products

The BIR issued the implementing rules and regulations (IRR) for certain provisions of Republic Act No. 11900 regarding the importation, manufacture, sale, packaging, distribution, use and communication of vaporized nicotine and non-nicotine products and novel tobacco products. The IRR which provides for the following amends Revenue Regulations Nos. 18-2021 and 7-2021:

- Definition of terms such as floor price, heated tobacco products (HTPs), nicotine, nicotine mixture, nicotine shots, and vapor products
- Excise tax rates, respective dates of effectivity thereof, and tax bases
- Inspection fees with sample computations
- Compliance and administrative requirements such as registration of manufacturers and importers, assignment of assessment numbers, registration of brand and variants, submission of sworn statement, posting of surety bond, application for Electronic Authority to Release Imported Goods (eATRIG), affixture of internal revenue stamps, keeping and maintenance of books and records, removal of tax-paid products, plant supervision and control, signage, and physical stocktaking
- Online sale and distribution
- Floor price
- Usage of local tobacco products

(Revenue Regulations No. 14-2022, published 17 November 2022)

Amended alphalist

Revising the format of the alphabetical list of employees

The revised format of the alphabetical list of employees ("Alphalist") which is a required attachment to BIR Form No. 1604-C (Annual Information Return of Income Taxes Withheld on Compensation) is already available. It now includes information regarding the utilization of the 5% tax credit under the Personal Equity and Retirement Account (PERA) Act of 2008. The revised format is attached as Annex "A" of RMC No. 160-2022 which may be accessed from the BIR website.

(Revenue Memorandum Circular No. 160-2022, issued 27 December 2022)

Effect of non-cooperation

Non-submission of TINs of cooperative members subject to penalties

The Commissioner of Internal Revenue (CIR) has clarified the implications of a cooperative's failure to submit the taxpayer identification numbers (TINs) of its members within six (6) months from the issuance of the cooperative's Certificate of Tax Exemption (CTE) pursuant to Item A3 of RMC No. 124-2020.

According to the CIR, only the following instances will justify a cooperative's failure to submit its members' TINs:

Glossary

BIR – Bureau of Internal Revenue
ERC – Energy Regulatory Commission
RMC – Revenue Memorandum Circular
TIN – Taxpayer Identification Number

1. The unsubmitted TIN pertains to inactive members who were delisted pursuant to Cooperative Development Authority Memorandum Circular No. 2022-14; and

2. The failure to submit was due to *force majeure* such as state of emergency or state of calamity as declared by the government and such *force majeure* no longer exists.

If the justifications are absent or have ceased to exist, the failure to submit members' TINs will be subject to penalties. Despite non-submission of members' TINs within the 6-month grace period, cooperatives with CTEs are still required to submit them after such grace period except if justified by the above instances.

In any case, all cooperatives are mandated to submit their Lists of Active Members with TIN and Inactive Members to the concerned Revenue District Office within 30 days from the effectivity of RMC No. 158-2022.

(Revenue Memorandum Circular No. 158-2022, issued 27 December 2022)

DST return

Availing the eDST System Balance Adjustment facility to recover DST erroneously paid

The Commissioner of Internal Revenue issued RMC No. 154-2022 to supersede RMC No. 142-2019 which prescribes the requirements for availing the Balance Adjustment facility of the Electronic Documentary Stamp Tax (eDST) System as an option for recovering erroneously deducted DST from the taxpayer's ledger.

The Balance Adjustment facility shall be available only for reasons arising from technical or system errors such as erroneously encoded information details and double/multiple affixtures of DST by the taxpayer on the same document. For other reasons, the remedy of the taxpayer is to apply for tax refund or tax credit certificate.

To avail of the Balance Adjustment facility, the taxpayer-user shall file a written request for adjustment in the ledger balance with the Chief, Miscellaneous Operations Monitoring Division, Collection Service together with proof of the incident that caused the erroneous deduction of DST.

(Revenue Memorandum Circular No. 154-2022, issued 16 December 2022)

ORUS implementation

Rolling out the features of BIR Online Registration and Update System

The BIR Online Registration and Update System (ORUS) will be available to taxpayers via www.bir.gov.ph under eServices, or https://orus.bir.gov.ph. ORUS is a web-based system that provides a facility for end-to-end BIR registration process.

Its features will be rolled out as follows:

Feature	Covered RRs and RDOs	Roll-out Date
Issuance of TIN of foreign individuals	RDO No. 39	December 12, 2022
Business registration and issuance of COR and ATP Application for ATP or use of BPRs/BPIs Employer Account Enrollment Registration of Books of Accounts	All RDOs under RR Nos. 6, 7A, 7B, 8A, 8B, 13 and 19	December 12, 2022
Registration of Books of Accounts	All RDOs under RR Nos. 1, 5, 10 and 14	December 19, 2022
	All RDOs under RR Nos. 2, 9A, 9B and 15	December 22, 2022
	All RDOs under RR Nos. 3, 11, 16 and 17	December 26, 2022
	All RDOs under RR Nos. 4, 12 and 18, LT Service, LT Divisions, LTAD and ELTRD	December 29, 2022
Business registration and issuance of COR and ATP	All RDOs including LT Divisions,	January 16, 2023

Glossary

BIR – Bureau of Internal Revenue
DST – Documentary Stamp Tax
RDO – Revenue District Office
RMC – Revenue Memorandum Circular
RR – Revenue Region
TIN – Taxpayer Identification Number

Feature	Covered RRs and RDOs	Roll-out Date
Application for ATP or use of BPRs/BPIs Employer Account Enrollment	LTAD and ELTRD	

Taxpayers who will avail of the facility are required to enroll or create an account in the ORUS and provide a permanent official email address which is required to be updated in the BIR registration record observing the guidelines under RMC No. 122-2022.

(Revenue Memorandum Circular No. 153-2022, issued 12 December 2022)

Zero-rated transactions

Clarifications on transitory provisions for VAT zero-rating of REEs' local purchases

The Commissioner of Internal Revenue further clarified several issues regarding the implementation of the transitory provisions in RR No. 21-2021, as explained in RMC Nos. 24-2022 and 49-2022.

- Local purchases of Registered Export Enterprises (REEs) between December 10, 2021 (date of effectivity of RR No. 21-2021) up to 8 March 2022 (date before the effectivity of RMC No. 24-2022) remain VAT zero-rated.

    1. If the seller imposed a 12% VAT within the above period, the following alternative options may be availed:

        a. The seller shall declare the sale as subject to 12% VAT. On the other hand, the purchaser may offset the input VAT against its own output VAT. If the purchaser is engaged in VAT zero-rated sales, it may either apply for input VAT refund or claim the input VAT as cost of sales or expenses.

        b. The seller shall amend its VAT returns after returning the VAT component to the REE buyer who shall also amend its VAT returns accordingly. The original VAT official receipt or invoice issued should be retrieved and cancelled by the seller, and a new one issued indicating the VAT zero rate.

- REEs under the 5% gross income tax (GIT) regime which have amended their registration from VAT to non-VAT after the expiration of their income tax holiday are not necessarily subject to percentage tax since the 5% GIT is in lieu of all taxes.
- REEs under the 5% GIT regime are still qualified for the VAT zero rate on their local purchases until the end of their incentive period.

(Revenue Memorandum Circular No. 152-2022, issued 7 December 2022)

Resumption of operations

Lifting the suspension of field audit and operations of the BIR

Last May 2022, the then Commissioner of Internal Revenue (CIR) suspended all field operations until further notice. This suspension has been lifted by the current CIR effective immediately.

Accordingly, all field audits, field operations or any form of business visitation in the execution of Letters of Authority (LOAs) / Audit Notices or Mission Orders (MOs) can already be conducted and new LOAs/MOs can be further issued.

(Revenue Memorandum Circular No. 148-2022, issued 22 November 2022)

Enhanced REVIE

Availability of the enhanced chatbot for TIN verification, RDO finder and eComplaint

The BIR Revenue announced the availability of the enhanced Digital Assistant – Chatbot REVIE which now includes Taxpayer Identification Number (TIN) Verification or Validation, RDO Finder and eComplaint facility.

REVIE, which was launched in June 2021, is an artificial intelligence that can be accessed 24/7 from the home page of the BIR website. Originally, REVIE can be sought for frequently asked questions (FAQs) about registration requirements, eServices, BIR forms and zonal values. This facility also gives the option to chat with a live agent.

The TIN Verification/Validation and RDO Finder assist taxpayers with their TIN and RDO inquiries while the

Glossary

BIR – Bureau of Internal Revenue
DOF – Department of Finance
RDO – Revenue District Office
RMC – Revenue Memorandum Circular
RR – Revenue Regulations
VAT – Value-Added Tax

eComplaint helps taxpayers lodge their grievances/complaints against establishments for non-issuance of receipts/invoices, tax evasion and other Tax Code violations. Complaints against erring BIR personnel can also be lodged through eComplaint.

(Revenue Memorandum Circular No. 146-2022, issued 10 November 2022)

Fuel testing

Guidelines and procedures for random field and confirmatory fuel testing

The BIR issued policies regarding the conduct of random field and confirmatory testing of gasoline, diesel and kerosene and enforcement operations, forfeiture and prosecution of offenses related to fuel marking. The policies provide for the following:

- Adoption of the entire definition of terms in Section 2 of DOF Joint Circular No. 1-2021
- Composition of the BIR Field Inspection Unit
- Requirement of Mission Orders and participation of authorized BOC officers in the testing activities of the BIR Field Inspection Unit
- Referral of legal issues to the Law & Legislative Division under the Legal Service or Legal Division of the concerned Revenue Region

The BIR also prescribed procedures in addition to those under DOF Joint Circular No. 1-2021. Said procedures cover the following:

- Acquisition of preliminary information on the person or establishment subject to the testing activities
- Conduct of random field and confirmatory testing activity
- Evaluation of the results of the testing activity
- Enforcement actions which include inventory stock-taking, apprehension or seizure, forfeiture and destruction, issuance of assessment notices, filing of civil and/or criminal case under the Run After Tax Evaders (RATE) Program, and closure

(Revenue Memorandum Order No. 59-2022, issued 27 December 2022)

Tracking device

Policies, guidelines and procedures in the processing and monitoring of ONETT

The BIR issued policies, guidelines and procedures in the processing and monitoring of One-Time Transactions (ONETT) through the ONETT Tracking System (OTS). The OTS enables the automated monitoring of ONETT starting from the BIR computation of the taxes due or from the presentation of requirements for the issuance of a Certificate Authorizing Registration (CAR) up to the issuance of the CAR.

Here are some of the policies and guidelines:

- The OTS shall be used for walk-in ONETT applications.
- eCAR generation and data transmission to the Land Registration Authority shall be done through the eCAR System.
- Only applications with complete documentary requirements shall be encoded into the OTS by the ONETT processing revenue officer or group supervisor.
- The ONETT processing period shall be counted from the receipt of complete documentary requirements. The next working day shall be counted as Day 1.

(Revenue Memorandum Order No. 58-2022, issued 16 December 2022)

Latest on regulatory landscape

Zoning regulations

Implementing the Electronic Zone Transfer System for inter-zone transfer of goods

The BOC issued guidelines for the Electronic Zone Transfer System (e-ZTS) for the transfer of goods from one Ecozone Export Enterprise (EEE) or Ecozone Logistics Service Enterprise (ELSE) to another which is located in a different Ecozone.

The guidelines provide for the following, among others:

- All EEE/ELSE locators who want to transfer their goods to another EEE/ELSE shall be required to post a General Transportation Surety Bond (GTSB).
- The GTSB is valid for one year without need for the BOC to check on the GTSB value for "charging/debiting" or for crediting for every transfer of goods.
- Procedures for the filing and approval of the GTSB, examination of goods for transfer, and monitoring of transfer

(Customs Memorandum Order No. 19-2022, dated 5 July 2022)

Accredited importers

Consolidated guidelines for the accreditation of importers

The BOC issued consolidated guidelines on the accreditation of importers, which provide the following:

- Only accredited importers can transact with the BOC using the automated customs processing system.
- Customs accreditation shall be valid for one year from date of approval.
- Importer accreditation may be automatically renewed under specific instances and subject to requirements.
- One-time accreditation privilege may be allowed for importers with high levels of customs compliance.
- Applicants shall register with the Client Profile Registration System (CPRS) and disclose their responsible officers, declarants and other material information.

Glossary

BOC – Bureau of Customs

- The accreditation of the following importers shall be governed by the consolidated guidelines:
  a. Other government agencies or instrumentalities;
  b. Foreign embassies, consulates, legations, agencies or other foreign governments;
  c. International organizations with diplomatic status and recognized by the Philippine government; and
  d. Foreign officials and employees of item "b" above.
- The following importers shall be covered by separate BOC guidelines for accreditation, registration and monitoring:
  a. Non-regular importers;
  b. Importers of postal items;
  c. Importers of goods cleared exclusively through informal entry process;
  d. Registered business enterprises and locators of Free Zones; and
  e. Other importers as determined by the Commissioner of Customs.
- Application process for first time or new applicants
- Application process for renewal of accreditation
- BOC procedures for action on applications
- Importers shall be truthful in declaring correct information and declarants and authorized representatives.
- Responsibility of accredited importer in relation to the accuracy of goods declaration and payment of duties, taxes and other charges; for post-clearance audit purposes; and to cooperate in the enforcement of the Customs Modernization and Tariff Act
- Violations and corresponding penalties
- Request for continuous processing relative to importers whose accreditations have been suspended
- Importer remedies for disapproved applications, suspensions, revocations and blacklistings

(Customs Administrative Order No. 7-2022, dated 5 July 2022)

Waste management

Enactment of the Extended Producer Responsibility Act of 2022

President Rodrigo Roa Duterte approved Extended Producer Responsibility Act of 2022 (Republic Act No. 11898) which amends the Ecological Solid Waste Management Act of 2000 (Republic Act No. 9003).

The amendments include the following:

- Under Definition of Terms, there are new terms such as “circular economy,” “extended producer responsibility,” “high recyclability,” “high retrievability,” “obliged enterprises,” “plastic,” “plastic neutrality,” and “sustainable consumption and production.”
- Extended producer responsibility refers to the environmental policy approach and practice that requires producers to be environmentally responsible throughout the life cycle of a product, especially its post-consumer or end-of-life stage.
- Reorganization of the National Solid Waste Management Commission
- Additional functions for the National Ecology Center
- New chapter containing the provisions regarding Extended Producer Responsibility
- New fines and penalties for violations regarding the compliance period for plastic packaging recovery programs

(Republic Act No. 11898, lapsed into law on 23 July 2022)

Taxing goodwill

Assignment of goodwill is subject to VAT if main subject of sale is not a capital asset

A domestic corporation (the “seller”) sold its service gas stations for PH₱580m. However, it received a total of PH₱1.8bn, with the remainder of PH₱1.29bn corresponding to goodwill. Subsequently, it requested a ruling from the Bureau of Internal Revenue (BIR) to confirm its opinion that the amount corresponding to the assignment of goodwill is not subject to VAT since it is an assignment of capital asset.

Glossary

VAT – Value-Added Tax

The BIR ruled that the total amount, including the amount pertaining to goodwill is subject to VAT. It explained that goodwill is a capital asset but only on the part of the buyer. Hence, on the part of the seller, the amount paid for goodwill is part and parcel of the selling price which cannot be sold or purchased independently.

The BIR ruling was appealed to the Department of Finance (DOF). In support of the argument that goodwill is a capital asset, the seller cited a Supreme Court decision which held that the sale of a Merchant Acquiring Business at a premium whereby goodwill was recognized and valued was considered a sale of a capital asset, hence, not subject to VAT.

The DOF found this argument misplaced. In the abovementioned case, the DOF noted that goodwill was treated as a capital asset because the main subject of the sale, the Merchant Acquiring Business, was considered a capital asset. In this regard, the DOF agreed with the BIR that goodwill necessarily attaches to the trade related property and cannot be sold independently.

In the current transaction, however, the main transaction is the sale of the service gas stations which is a transaction deemed sale subject to VAT. Consequently, the DOF ruled that the transfer of goodwill is necessarily also subject to VAT.

(Department of Finance Opinion No. 14-2022, dated 12 August 2022)

Profit share

Distribution of profits to construction JV partners not subject to withholding taxes

A valid joint venture (JV) or consortium formed to undertake construction projects which is fully compliant with the requirements under Section 3 of Revenue Regulations (RR) No. 10-2012 is exempt from regular corporate income tax (RCIT) and withholding taxes. The co-venturers, on the other hand, are liable to RCIT on their respective shares in JV profits.

The Secretary of Finance is of the opinion, however, that although co-venturers of a JV or consortium are liable to RCIT, their shares in JV profits are not subject to creditable withholding taxes (CWT) because:

1. The Tax Code does not expressly impose CWT on the net income distributed to each co-venturer in a tax-exempt joint venture;
2. Section 2.57.2 of RR No. 2-1998, which contains an exclusive enumeration of income payments subject

to CWT, does not include the distributive share of co-venturers in a tax-exempt joint venture; and

3. Section 2.57.2(E) of RR No. 11-2018 which imposes a 10% or 15% CWT on payments to general professional partnerships (GPPs) does not apply to joint ventures because they are not considered similar to GPPs.

(Department of Finance Opinion No. 18-2022, dated 17 October 2022)

Reaping dividends

Mutual benefit associations declaring dividends to members may be tax-exempt

According to the Secretary of Finance, the Knights of Columbus Fraternal Association of the Philippines, Inc. (KCFAPI) can remain a tax-exempt non-stock, non-profit mutual benefit association notwithstanding the fact that it receives and manages funds associated with savings or investment programs, and that its Board of Trustees is allowed to declare dividends from surplus.

Under Revenue Memorandum Circular (RMC) No. 51-2014, the receipt and management of funds associated with savings or investment programs is a form of inurement, hence, is prohibited under Section 30 of the Tax Code. However, this rule does not cover a society, order, association or non-stock corporation under Section 30(C) with respect to the payment of life, sickness, accident and other benefits exclusively to members or their dependents.

Relevantly, RMC No. 38-2019 mentions that Section 30(C) organizations are required to have an established system of benefits payments to its members and their dependents, or an established system of payments of life, sickness, accident or other benefits to its members or their dependents. Hence, these organizations will receive and manage funds from member payments and such other funds associated with savings or investment programs. As such, KCFAPI's receipt and management of funds associated with savings or investment programs does not violate the non-inurement requirement.

Such receipt and management of funds includes the declaration of dividends to its members. This is evident from the By-Laws which provides the conditions of dividend payments which is part of the overall fund management process.

The Secretary of Finance also noted that KCFAPI's distribution of dividends from surplus is expressly allowed under Section 408 of the Insurance Code. More importantly, the dividends of mutual benefit associations are very much different from the dividends of stock corporation under the Revised Corporation Code. Hence, mutual benefit associations are legally allowed to declare dividends and give out additional benefits which should not be interpreted as dividends for stock corporations.

(Department of Finance Opinion No. 17-2022, dated 17 October 2022)

Material

Locally purchased vehicle for technical cooperation project not VAT-exempt

A German company requested the BIR to confirm the value-added tax (VAT) exemption of its local purchase of a sports utility vehicle (SUV) to be used for a technical cooperation project between the German and the Philippine governments. In support, it submitted the relevant Technical Cooperation Agreement (TCA) and the 2002 Exchange of Notes (E/N).

Under said 2002 E/N, the following are considered exempt from taxes, licenses, harbour duties, import and export duties and other public charges levied by the Philippine government:

1. Imported materials and motor vehicles; and

2. Locally purchased materials and services.

However, in BIR Ruling ITAD No. 12-2022, the Commissioner of Internal Revenue (CIR) denied the request. Applying the strict interpretation of tax exemptions against the taxpayer, the CIR opined that "locally purchased materials" does not include motor vehicles purchased in the Philippines. Hence, the purchase of the SUV to be used in the technical cooperation project was not considered to be a VAT-exempt locally purchased material.

The Secretary of Finance agreed with the CIR's denial of the indirect VAT exemption request and ruled that strict construction is applied when there is an uncertain inference of tax exemption.

(Department of Finance Opinion No. 15-2022, dated 26 September 2022)

Glossary

BIR – Bureau of Internal Revenue
ITAD – International Tax Affairs Division

Transfer request

How existing IT-BPM registered business enterprises may register with the BOI

All concerned registered business enterprises (RBEs) in the Information Technology – Business Process Management sector desiring to adopt a 100% work-from-home (WFH) arrangement with its employees may register with the Board of Investments (BOI) on or before 31 December 2022. Here are the procedures for BOI registration:

- The RBE shall file its request with the concerned investment promotion agency (IPA) using the Request to Register with BOI Form (see Annex A of DTI MC No. 22-19).
- The IPA shall endorse the request to the BOI Infrastructure and Services Industries Service (ISIS).
- The BOI ISIS shall issue the BOI Certificate of Registration to the RBE after the above endorsement and the payment of a PHP2,250.00 fee with the BOI.
- The concerned IPA shall continue to administer the remaining tax incentives of the RBE within the period of entitlement per issued BOI Certificate of Registration. In order to avail of said incentives, the corresponding applications for availment shall be filed by the RBE with the concerned IPA.
- After the lapse of the remaining period of tax incentives, the existing registered project shall not be entitled to additional incentives unless the activity qualifies as a new investment or qualified expansion under the Strategic Investment Priority Plan.
- Compliance monitoring of the RBE newly registered with the BOI shall remain with the concerned IPA.
- To facilitate the movement of capital equipment within and outside the Ecozones or freeport zones, the RBE shall ensure that the number of laptops and other equipment outside the Ecozone or freeport zone does not exceed the number of employees under WFH arrangement. However, additional laptops and other equipment may be allowed if reasonably necessary and upon approval by the IPA.

Glossary

BOI – Board of Investments
DTI – Department of Trade and Industry
MC – Memorandum Circular

- The RBE shall submit the following to the IPA within 30 days from the issuance of its BOI Certificate of Registration:
  a. List of equipment and/or other assets brought out of the Ecozone or freeport zone;
  b. Acquisition cost, book value and year of acquisition of the above assets; and
  c. Total number of employees and number of employees under WFH arrangement.
- Within 5 days after each month, the RBE shall submit the following to the IPA:
  a. Additional or other equipment or assets brought out of the Ecozone or freeport zone; and
  b. Total number of employees and number of employees under WFH arrangement.
- In case of cancellation of BOI Certificate of Registration, the RBE shall file its request to the concerned IPA for evaluation and assessment of refund or penalties, if applicable.

(FIRB Advisory No. 008-2022, issued 18 October 2022; DTI Memorandum Circular No. 22-19, dated 18 October 2022)

Internal disputes

Rules and guidelines on arbitration of intra-corporate disputes for corporations

Pursuant to Section 181 of the Revised Corporation Code (RCC), the Securities and Exchange Commission (SEC) formulated and promulgated the rules and guidelines on the arbitration of intra-corporate disputes for corporations. The rules include the following:

- The rules shall apply to appointments by the SEC, upon request of the parties, of arbitrators tasked to resolve intra-corporate disputes of domestic corporations in accordance with Section 181 of the RCC.
- The rules shall not apply if the arbitration agreement expressly provides a seat or place of arbitration other than the Philippines.
- An arbitration agreement may be included in the articles of incorporation or by-laws or stipulated in a separate agreement.
- The arbitral tribunal shall have the power to grant interim measures such as:

a. Preliminary injunction directed against a party to arbitration;

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

c. Appointment of a receiver;

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

e. Appointment of a management committee.

- Composition of Arbitral Tribunal and appointment procedure
- No party or any person acting on its behalf shall communicate with any candidate for appointment as arbitrator without notice to the other party except to discuss the candidate's qualifications, availability, or independence in relation to the parties.
- Requirements for acceptance of appointment
- Disclosures by and challenge of arbitrators
- Procedure for challenge
- Request for release of arbitrators
- Replacement of arbitrators

(SEC Memorandum Circular No. 8-2022, dated 19 September 2022)

Trust issue

Nullification of APIC and conversion into subscribed capital violates the Trust Fund doctrine

In 2008, a domestic corporation obtained Securities and Exchange Commission (SEC) approval to convert advances from its parent company to additional paid-in capital (APIC). Subsequently, the domestic corporation sought the SEC's opinion on whether said APIC can be nullified and then converted into subscribed capital without violating the Trust Fund doctrine.

According to the SEC, although there are no specific SEC rules regarding the nullification of APIC and its subsequent conversion into subscribed capital, APIC conversion involves the observance of the Trust Fund doctrine which prohibits the return or release of any part of subscribed capital to the stockholders. In this regard, the Supreme Court has ruled that the term "capital" includes the par value and any premiums received in consideration of the original issuance of shares.

Accordingly, APIC forms part of equity emanating from the original subscription agreement. Hence, APIC is part of capital and falls within the purview of the Trust Fund doctrine. In this light, the SEC opined that the nullification of APIC and its subsequent payment for additional capital stock subscription will effectively result in the unauthorized distribution of the corporate Trust Fund, thereby violating the Trust Fund doctrine.

(SEC-OGC Opinion No. 22-13, dated 30 September 2022)

Digital version

Issuance of the prudential requirements applicable to digital banks

The Monetary Board amended the Manual of Regulations for Banks (MORB), Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) and Manual of Regulations on Foreign Exchange Transactions (FX Manual) to clarify the extent of the applicability of prudential requirements to digital banks and to amend the requirements for the establishment of banks.

The amended provisions include the following:

- Section 121 of the MORB on Minimum Required Capital to include the PHP 1bn minimum required capitalization for digital banks
- Section 131 of the MORB on Policy Statement and Definition of Terms to include the term "Complex banks"
- Section 132 of the MORB on Board of Directors to require at least one director to have a minimum 3 years of experience and technical knowledge in operating a business in the field of technology or e-commerce
- Section 134 of the MORB on Officers to require at least one senior management officer to have a minimum 3 years of experience and technical knowledge in operating a business in the field of technology or e-commerce
- Section 378 of the MORB on Prudential Limits and Restrictions on Equity Investments to include the aggregate limit of 25% in relation to the net worth of digital banks
- Section 1101 of the MORB on Assessment Fees on Banks
- Digital banks shall comply with prudential reporting requirements applicable to universal banks and

commercial banks as set forth in Appendix 7 of the MORB

(BSP Circular No. 1154-2022, dated 14 September 2022)

SBLAF templates

Guidelines on the adoption of the Standard Business Loan Application Form

The Monetary Board issued the approved guidelines on the adoption of the Standard Business Loan Application Form (SBLAF). In this regard, the Manual of Regulations for Banks and Manual Regulations for Non-Bank Financial Institutions have been amended accordingly.

The following BSP-Supervised Financial Institutions (BSFIs) are covered by the guidelines:

1. Banks and their subsidiary/affiliate financing and leasing companies;
2. Government Non-Bank Financial Institutions; and
3. Financing/leasing companies with Quasi-Banking license that are not subsidiaries of banks.

SBLAF templates shall be used for loan applications that meet the following requirements:

1. The applicant-borrower must be a sole proprietorship, partnership, cooperative or corporation classified as an MSME or start-up, and natural person proposing to do business.
2. The purpose of the loan should be to finance business operations and capital expenditures or credit accommodations for non-business or personal purposes.
3. The loan may be secured or unsecured.

The guidelines for the use and adoption of the SBLAF include the following:

- The SBLAF templates shall be the sole forms that will be used for covered loan applications.
- The SBLAF templates can be made available in printed form and/or electronic form.
- The SBLAF shall serve as the covered entities' primary loan application screening tool.
- The supporting documents listed in the SBLAFs shall not be construed as standard requirements for loan applications.
- Covered entities shall use the SBLAF templates for new covered loan applications, additional loans and renewal and restructuring of existing loans.
- Covered entities shall reflect in their policies on credit, anti-money laundering (AML), countering terrorism and proliferation financing (CTPF), and consumer protection.

(BSP Circular No. 1156-2022, dated 30 September 2022)

BOT implementation

Revision of the IRR of the Build-Operate-and-Transfer (BOT) Law

The Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 6957, as amended by RA No. 7718, have been further revised as follows:

- To facilitate the delivery of high-quality services to the public, the revised IRR now includes the provision of appropriate sharing of risks between the government and the project proponent.
- A new term, “Availability Payments,” has been defined. It refers to predetermined payments by the agency/LGU to the project proponent in exchange for delivering an asset or service in accordance with the contract.
- The definition of “Build-and-transfer” now includes the payment of a reasonable rate of return to the project proponent.
- The definitions of “Build-operate-and-transfer” and “Build-own-and-operate” now allows the project proponent to charge fares on facility users.
- The definition of “Material Adverse Government Action” now refers to any act of Government in general which specifically discriminates against the sector, industry or project.
- The term “Private Sector Infrastructure or Development Projects” now includes additional projects such as energy efficiency and conservation, renewable energy, electric vehicles charging stations with related infrastructure, intermodal transport stations and terminals, in-land cargo terminals, park & ride facilities, and automated fare collection systems.

Glossary

BSP – Bangko Sentral ng Pilipinas
LGU – Local Government Unit

- A new term, “Revenue-Based PPP Project,” has been defined. It refers to a scheme where the project proponent is authorized to charge and collect from the public reasonable user fees or tariffs.
- A new term, “Viability Gap Funding,” has been defined. It refers to a type of subsidy that the government may provide to a revenue-based PPP project.
- Additional eligible types of projects
- New requirements for when a project shall be deemed complete
- Amended parameters, terms and conditions
- In the approval of projects, omission of the criteria that the proposed project is optimal based on a value engineering/value analysis study
- In the approval of projects, omission of the criteria that the output of the project does not restrict competition
- Tolls, fares, fees, rentals and charges may be adjusted during the life of the contract based on an approved formula/adjustment schedule in the approved contract. If the regulator disapproves the proposed adjusted amount, the agency/LGU may allow the project proponent to recover the difference through measures allowed in the contract and consistent with the Constitution and applicable laws.
- In the audit of collections, omission of the express requirement that the revenues, shares and/or receipts from projects shall be subject to accounting and auditing rules and regulations of the Commission of Audit.
- Removal of rescission as an outcome in case of failure to comply with contractual obligations where such failure is not remediable or unremedied for an unreasonable length of time.

(Revised Implementing Rules and Regulations of Republic Act (RA) No. 6957, as amended by RA No. 7718)

Running on battery

Issuing the IRR of the Electric Vehicle Industry Development Act

The Secretaries of the Department of Energy (DOE) and the Department of Transportation (DOTr) have approved the Implementing Rules and Regulations of the Electric Vehicle Industry Development Act (EVIDA-IRR).

The EVIDA-IRR provides for the following:

- The EVIDA-IRR applies to the electric vehicle (EV) industry comprising of the manufacture, assembly, importation, construction, installation, maintenance, trade and utilization, research and development, and regulation of EVs, charging stations and related equipment, parts and components, batteries, and related support infrastructure.
- EVs refer to vehicles with at least one electric drive for vehicle propulsion.
- The following activities shall undergo an evaluation process to determine their inclusion in the Strategic Investment Priority Plan (SIPP) and possible entitlement to incentives and length of time:

  1. Manufacture and assembly of EVs, electric vehicle charging stations (EVCS), batteries, and parts and components; and
  2. Establishment and operations of EVCS and other related support infrastructure such as research and development centers, training centers, testing centers, and waste treatment facilities.

  In this regard, the Board of Investments, in coordination of the DOE and DOTr shall issue guidelines for the endorsement of fiscal incentives for the above activities.
- The importation of completely built EV units shall be entitled to incentives under the TRAIN Law (RA No. 10963). In the case of imported electric jeepneys and electric tricycles, the Department of Finance, upon recommendation of the Department of Trade and Industry, may suspend the exemption in order to protect local manufacturers.
- The importation of completely built EVCS units shall be duty-free for 8 years from the effectivity of the EVIDA.
- The importation of capital equipment and components used in the manufacture or assembly of EVs and construction or installation of EVCS shall undergo an evaluation process to determine their inclusion in the SIPP and possible entitlement to incentives and length of time.

Glossary

LGU – Local Government Unit
PPP – Public-Private Partnership
RA – Republic Act

- Battery EVs and Hybrid EVs shall be entitled to a 30% discount on motor vehicle user's charges, vehicle registration fees and inspection fees for 8 years from the effectivity of the EVIDA.

(Implementing Rules and Regulations of Republic Act No. 11697, otherwise known as the Electric Vehicle Industry Development Act, approved on 02 September 2022)

Foreign business

Non-Philippine nationals engaged in MSEs, required to secure DOLE Certification

All non-Philippine nationals intending to engage in micro and small domestic market (MSEs) enterprises with a paid-in equity capital of at least US$100,000.00 but less than US$200,000.00 are required to obtain a Certification from the concerned Department of Labor and Employment (DOLE) Regional Office. Such requirement is for purposes of registration with the Securities and Exchange Commission.

The issuance of the Certification is subject to the payment of a PHP500.00 fee and the submission of a notarized Affidavit of Undertaking indicating that the majority of their direct employees shall be Filipinos and that in no case shall the number of Filipino direct employees be less than 15.

The form for the Request for Certification and templates for the Certification and Affidavit of Undertaking are attached to Labor Advisory No. 20-2022.

(DOLE Labor Advisory No. 20-2022, dated 24 October 2022)

Work from home

Issuance of the revised IRR of the Telecommuting Act

The Secretary of the Department of Labor and Employment (DOLE) issued the revised implementing rules and regulations (IRR) of the Telecommuting Act (Republic Act No. 11165) which supersede DOLE Department Order No. 202-2019.

The revised IRR provides for the following, among others:

- The terms and conditions of telecommuting shall not be less than the minimum labor standards and shall not diminish or impair the terms or conditions of employment contained in company policy or practice, contract or CBA.

Glossary

CBA – Collective Bargaining Agreement

- Work performed in an alternative workplace shall be considered work performed in the regular workplace of the employer.
- All time that an employee is required to be on duty and is permitted or suffered to work in the alternative workplace shall be counted as hours worked.
- Telecommuting employees are not considered field personnel except when their actual hours of work cannot be determined with reasonable certainty.
- Employers and employees may agree on hybrid arrangements where work can be performed in both the regular and alternative workplace, under a compressed workweek or staggered working time arrangement, or under other recognized flexible work arrangement.
- An employee may offer its employees, on a voluntary basis, a telecommuting program under mutually agreed terms and conditions. The employee may likewise propose a telecommuting program.
- The telecommuting program may be in the form of a separate policy or incorporated into existing policy or employment contracts. It shall contain provisions reasonably necessary or relevant to ensure its effective implementation such as those pertaining to eligibility, alternative workplace, telecommunication and computer technology, Occupational Safety and Health (OSH), performance evaluation, code of conduct, data protection, emergency protocols, duration, and dispute resolution.
- Telecommuting employees shall be accorded the same treatment as those working in the regular workplace.
- The employer shall notify the DOLE of the implementation of telecommuting through the Establishment Report System.

(DOLE Department Order No. 237-2022, dated 16 September 2022)

AFS/GIS deadlines

2023 filing of annual financial statements and general information sheet

The Securities and Exchange Commission (SEC) adopted the following measures in the filing of annual reports with the SEC:

- All corporations, including the branches, representative offices, regional headquarters, and regional operating headquarters (ROHQs) of foreign

corporations with fiscal years ending 31 December 2022 shall file their audited financial statements (AFS) through the Electronic Filing and Submission Tool (eFAST) in accordance with the following schedule:

Submission Dates	Last Digit of SEC Registration / License Number
May 2, 3, 4, 5	1 and 2
May 8, 9, 10, 11, 12	3 and 4
May 15, 16, 17, 18, 19	5 and 6
May 22, 23, 24, 25, 26	7 and 8
May 29, 30, 31 and June 1, 2	9 and 0

The above schedule shall govern corporations under SEC Extension Offices. However, it shall not apply to:

a. Corporations whose fiscal years end on a date other than 31 December 2022;

b. Corporations whose securities are listed, public companies, and entities covered under Section 17.2 of the Securities Regulation Code; and

c. Corporations whose AFS are being audited by the Commission on Audit.

- Regardless of the last numerical digit, the AFS may be filed before the first day of the coding schedule pertaining to said digit.
- Late filings or submissions shall be accepted starting 5 June 2023 and shall be subject to penalties.
- Except for consolidated financial statements, the AFS shall be stamped "received: by the BIR or its Authorized Agent Banks (AABs) unless the BIR allows an alternative proof of submission for its AABs and/or other facilities.
- The following shall submit annual AFS as provided under the general financial reporting requirements:

  a. Stock corporations with total assets or total liabilities of PHP600,000.00 or more;

  b. Nonstock corporations with total assets or total liabilities of PHP600,000.00 or more;

  c. Branch offices/Representative offices of stock foreign corporations with assigned capital of PHP1m or more;

  d. Branch offices/Representative offices of nonstock foreign corporations with total assets of PHP1m or more; and

  e. ROHQs with total revenues of PHP1m or more;

  Corporations which do not meet the above thresholds may submit their AFS accompanied by a duly notarized Treasurer's Certification only.

- All corporations shall file their General Information Sheet (GIS) through the eFAST within 30 days from date of actual annual stockholders' meeting (for stock corporations), from date of actual annual members' meeting (for nonstock corporations), and from anniversary date of issuance of SEC license (for foreign corporations).
- All corporations, both stock and nonstock, are required to file their annual reportorial requirements through the eFAST, formerly known as the Online Submission Tool (OST).
- Reports may be returned due to poor image quality, horizontal image orientation, wrong company profile, and wrong period covered.
- The reckoning date for the receipt of reports is the date of initial submission through the eFAST if the report is compliant with the requirements.

(SEC Memorandum Circular No. 9, dated 6 December 2022)

Security deposit

Amendment to IC Circular Letter regarding deposit of securities by insurance companies

The Insurance Commission (IC) amended Circular Letter No. 2021-71 which pertains to the deposit of securities for companies currently in the process of complying with Section 209 of the Amended Insurance Code. Under the sole amendment, insurance companies are allowed to invest in government securities monthly for a period until 22 December 2022 with no further extension. Proof of compliance with the security deposit shall be submitted on or before the same date.

(IC Circular Letter No. 2022-50, dated 22 November 2022)

Glossary

BIR – Bureau of Internal Revenue

Meet us

Isla Lipana & Co./PwC Philippines holds centennial celebrations with three July events

Evening for clients and friends kicked off the event series

It was an evening of firsts —

● the first of July

● our first major face-to-face event during pandemic

● our first one hundred years.

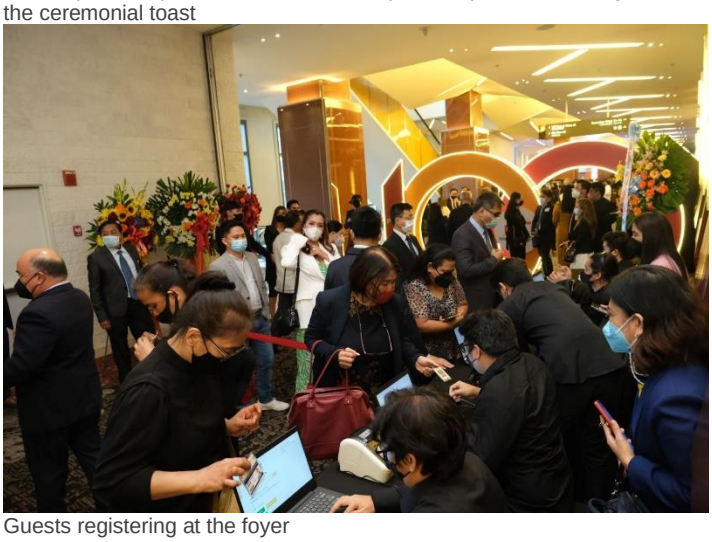
After a simple celebration of Isla Lipana & Co./PwC Philippines' 100th birthday on 22 June, the first of three major events happened on 1 July at the Marriott Grand Ballroom in Pasay City — the centennial celebration "100 Years of Trusted Service" for clients and friends.

The two other events were for our alumni and employees, held at Okada Manila on 8 and 11 July, respectively.

The ten-member Executive Leadership Team

The 44 partners plus three former territory senior partners on stage for the ceremonial toast

L-R: Rex Drilon (Center for Excellence in Governance), Cathy Hufana-Ang (Ayala Corporation), Vic Noel (Globe Telecom), Rick Danao (Chairman and Senior Partner, Isla Lipana & Co./PwC Philippines)



Guests registering at the foyer

L-R: Isla Lipana & Co. Deals and Corporate Finance Managing Director Raoul Villegas, Pilipinas Shell Petroleum Corporation CFO Reynaldo "Rey" P. Abilo, Justice Reform Initiative President Jerome Pascual, San Miguel Corporation Chief Finance Officer Ferdinand Constantino, Isla Lipana & Co. Chairman Emeritus and ESG Leader Alex Cabrera, SharePhil President Jaime “Jimmy” Ysmael

L-R: Isla Lipana & Co. Deals and Corporate Finance Managing Director Raoul Villegas, Unilab CFO Joselito Diga, Keppel Philippines Holdings, Inc. President and Director Stefan Tong Wai Mun, Lynville Land Development Corporation President & CEO Kerwin Padua, Isla Lipana & Co. Chairman and Senior Partner Roderick “Rick” Danao, Isla Lipana & Co. Assurance Managing Partner Aldie Garcia, Isla Lipana & Co. Assurance Partner Corina Molina

Our partners and managers welcomed guests at the foyer over cocktails, all excited to see each other after a long time. Photos and videos were taken at the selfie stations and centennial installations.

● Ushering everyone to the program were the dramatic theme setter video and dazzling opening number by **Legato Visual Performing Arts.**

● Chairman and Senior Partner **Roderick Danao** gave a warm welcome with a heartfelt speech.

● Chairman Emeritus and ESG Leader **Alex Cabrera** presented several pioneering initiatives for the centennial year.

● Deals & Corporate Finance Managing Partner and Markets Leader **Mary Jade Roxas-Divinagracia** gave snapshots of our exciting current and future programs as part of the PwC network.

● Vice Chairperson and Tax Managing Partner **Malou P. Lim** led the formal tribute to former Chairman and Senior Partner **Jose C. Florento**, who recently passed.

● Former Chairman and Senior Partner **Tammy H. Lipana** recalled her outstanding career with the firm and introduced the keynote speaker.

● Former Chairman and Senior Partner **Corazon S. de la Paz-Bernardo** gave her keynote speech that recounted the highlights of her 20-year leadership of the firm.

● Assurance Managing Partner and VisMin Business Leader **Aldie P. Garcia** introduced our new thought leadership initiative with fellow centenarian companies.

● Consulting Managing Principal **Veronica R. Bartolome** delivered a stirring preamble to **El Gamma Penumbra's** intense performance that showcased photo-stories of Filipino values.

● **PwC Glee**, our 50-strong in-house singing group, gave a commanding performance of inspirational songs.

● PwC Glee led the well-received "100 Voices for Our 100 Years" segment where they sang live with 50 other employees from our other offices who pre-recorded their part.

● Roderick Danao and Malou Lim introduced all partners, including the newly admitted ones effective that day.

● Former Chairman and Senior Partner **Judith Lopez** led the ceremonial toast with a special message.

● Singer **Morisette**, dubbed as Asia's Phoenix, serenaded everyone towards the end of the evening.

● Seasoned journalist **Mitzi Borromeo** hosted the program.

We would like to thank everyone who took the time to be with us, including well-wishers who sent flowers and drinks, and the production teams who made this milestone event possible.

Minimum public health protocols were observed.

Please watch this video (https://fb.watch/e20UVzNszM/) for a quick look at what transpired on that memorable evening.

Financial institution presents symposium for public development with Alex Cabrera

The Asian Development Bank (ADB) invited PwC Philippines Chairman Emeritus and ESG Leader Alex Cabrera to speak in its week-long online symposium from 27 June to 1 July 2022.

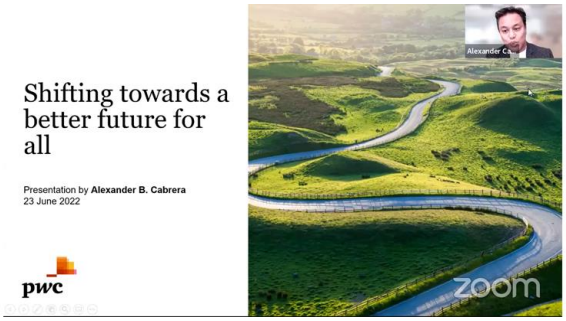
The event was ADB's way to show appreciation to the Government of Japan for its continued support for Japan Funds.

Alex was featured in Session 3 of the symposium held on 29 June. In his presentation on Public Finance Management, he discussed the investor considerations of public-private partnerships locally and in other countries, cross-border structures, and base erosion and profit-shifting (BEPS) policies and action plans. When asked about public finance practices of other countries, Alex replied that it is very important to adopt Honduras' best practices in doing open contracting policies for their infrastructure in order to build confidence and good governance. He also said that trust, transparency and accountability over the government funds and the execution of the projects would be most critical in the next decade.

The two-hour session was attended by students from the designated institutions of the ADB-Japan Scholarship program, as well as ADB officers and guests.

Alex Cabrera joins top business leaders, industry experts in promoting an investment-led and sustainable economy

Chairman Emeritus and ESG Leader Alex Cabrera has been featured in a virtual roundtable discussion organized by the Stratbase ADR Institute and Philippine Business Environmental Stewardship on 23 June 2022 via Zoom and Facebook Live.



Alex, as head of Management Association of the Philippines' (MAP) Environment, Social and Governance (ESG) Committee, presented environmental and government policies for the private sectors' advancing their ESG standards. He also cited the Shared Prosperity Covenant, an initiative of the MAP.

The 2.5-hour event was attended by business and environment groups and the academic community. In his parting words for the students, he advised them to always look for data, know what is true, and practice discernment and critical thinking on things seen on social media. These, he said, can make a difference in their own small way, and that the perfect time is always now.

Talk to us

For further discussion on the contents of this issue of the **Client Advisory Letter**, please contact any of our partners.

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Request for copies

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