

What's Inside...

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies).

20/F Chatham House
Valero cor. Rufino Sts.



Salcedo Village
Makati Zip Code



Website
Email



Telephone Nos.



Copyright © 2020 by
Du-Baladad and Associates
(BDB Law). All rights reserved.
No part of this issue covered by
this copyright may be produced
and/or used in any form or by
any means – graphic, electronic
and mechanical without the
written permission of the
publisher.

	<u>PAGE NOS.</u>
Highlights for August 2020	1-4
Significant Court Decisions	
• SUPREME COURT	5
• COURT OF TAX APPEALS	6-9
Significant Regulatory Issuances	
• BUREAU OF INTERNAL REVENUE	10-19
• SECURITIES AND EXCHANGE COMMISSION	20-24
• BANGKO SENTRAL NG PILIPINAS	25-30
• INSURANCE COMMISSION	31-34
Published Article	
• VOLUNTARY ASSESSMENT AND PAYMENT PROGRAM	35-37
OUR EXPERTS	
• The personalities	38

HIGHLIGHTS for AUGUST 2020

HIGHLIGHTS

SUPREME COURT DECISION

- It is not required that the requests for additional documents by the taxing authority be made in written form. All subsequent verbal requests made by the tax authority are sufficient for the purpose of determining the reckoning point of the 120-day period. (*Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020)

COURT OF TAX APPEALS DECISIONS

- Both the administrative and judicial claims for refund must be filed within the 2-year prescriptive period from the time of payment of tax. (*Euroversal Properties, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9869, August 3, 2020)
- When initial assessment is already made in the manner prescribed by law, the BIR is not authorized to issue another assessment beyond the prescriptive period. (*ED & F Man Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case Nos. 9577 & 9739, August 5, 2020)
- The CTA has jurisdiction to resolve all tax matters which includes the validity of the CIR's interpretation of a tax provision in the exercise of the latter's quasi-legislative function. (*Petron Corporation v. Commissioner of Internal Revenue*, CTA Case Nos. 9565, 9606 & 9645, August 24, 2020)
- As part of due process, in the issuance of tax assessments, the PAN and FLD must show, among others, in detail the facts on which the assessment is based; otherwise said assessment shall be void. The CIR must also not ignore a taxpayer's request that it be furnished with details and explanation of the alleged tax liability. (*Morning Star Milling Corporation v. Commissioner of Internal Revenue*, CTA Case No. 9294, August 26, 2020)
- Any re-assignment/transfer of cases to another revenue officer or another group of revenue officers requires the issuance of a new LOA. (*Integrated Solutions Technology Limited v. Commissioner of Internal Revenue*, CTA Case No. 9608, August 26, 2020)
- It is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. (*Scicindustrial Corp. v. Bureau of Internal Revenue*, CTA Case No. 9616, August 27, 2020)

BIR ISSUANCES

- **Revenue Regulations No. 20-2020, August 17, 2020** - This amends certain provisions of Revenue Regulations (RR) No. 06-2008 in relation to RR No. 6-2008 relative to the imposition of tax for the sale, barter, exchange or other disposition of shares of stock not traded through the local stock exchange.
- **Revenue Memorandum Order No. 27-2020, July 21, 2020** - This prescribes the BIR Digital Transformation (DX) Roadmap for 2020-2030, which enumerates the programs, outcomes and corresponding timelines that will help the BIR in carrying out its mission to improve revenue collections to fund the national government programs and initiatives under the 10-Point Socio Economic Agenda.
- **Revenue Memorandum Circular No. 79-2020, August 5, 2020** - This provides the guidelines for the filing of various returns and payment of tax due thereon by taxpayers under the jurisdiction of National Capital Region (NCR), Bulacan, Cavite, Laguna and Rizal during the period of Modified Enhanced Community Quarantine (MECQ).
- **Revenue Memorandum Circular No. 80-2020, August 6, 2020** - This amends the RDO covered by RMC No. 79-2020 by including RDO Nos. 55 to 57.
- **Revenue Memorandum Circular No. 81-2020, August 5, 2020** - This provides the clarification on Annex 4 - Citizen/Client Satisfaction Survey (CCSS) of the Inter-Agency Task Force (IATF) Memorandum Circular No. 2020-1 by the Secretary of the Department of Budget and Management (DBM).
- **Revenue Memorandum Circular No. 82-2020, August 10, 2020** - This prescribes the guidelines on the use of the electronic Audit Financial Statements (eAFS) System for the submission of attachments to the Income Tax Returns (ITRs) of taxpayers with Fiscal Year Accounting Period and in the submission of attachments to the quarterly ITRs.
- **Revenue Memorandum Circular No. 83-2020, August 6, 2020** - This Circular addresses the issues and concerns of taxpayers regarding the tax implications of measures being implemented to prevent the spread of COVID-19 on cross-border matters.

HIGHLIGHTS for AUGUST 2020

HIGHLIGHTS

SEC ISSUANCES

- **MC NO. 24 S. 2020, August 24, 2020** – This provides for the guidelines on posting of additional securities deposit, substitution of securities deposit and change of resident agent.
- **MC NO. 23 S. 2020, August 18, 2020** – This provides for the rules on corporate debt vehicle.
- **MC NO. 22 S. 2020, August 18, 2020** – This provides for the guidelines on corporate term, under Section 11 of the Revised Corporation Code of the Philippines (RCC).
- **MC NO. 20 S. 2020, August 11, 2020** – This provides for SEC rules on the number of independent directors and sectoral representatives of exchanges and other organized markets.

BSP ISSUANCES

- **BSP Circular No. 1093 dated August 20, 2020** – This contains amendments to the Manual of Regulations for Banks (MORB) on the real estate limits of universal and commercial banks (UBs/UKs) and thrift banks (TBs).
- **Circular Letter No. CL-2020-041 dated August 28, 2020** – This contains the operational relief measures covering prescriptive period and processing fees under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended.
- **Memorandum No. M-2020-064 dated August 17, 2020** – This is addressed to all concerned banks regarding the documentary requirements and procedures on the use of bank asset (real property in the name of the bank) as underlying collateral for rediscounting.
- **Memorandum No. M-2020-060 dated August 5, 2020** – This is addressed to all covered Non-Bank BSP-Supervised Financial Institutions (BSFIs) regarding the guidelines on the electronic submission of the Annual Report (AR) and Audited Financial Statements (AFS).

IC ISSUANCES

- **Approval of the Commission is required only if the change in the ownership of a company which indirectly owns a domestic insurance and/or reinsurance broker company would affect the ownership structure of the latter.** (LO-2020-10, August 27, 2020)
- **Inclusion of a Surety Company in the Negative List of the GPPB results in the rejection of the surety bonds it issued.** (LO-2020-08, August 19, 2020)

HIGHLIGHTS for AUGUST 2020

HIGHLIGHTS

- **Insurer of the guilty party may validly require the insured in a motor car insurance policy to submit a Certificate of No Claim secured from the third-party insurer in relation to such claim. Failure to submit the Certificate of No Claim can delay the claims process or if warranted after investigation, deny the claim for third-party property damage. (LO-2020-06, August 7, 2020)**
- **Circular Letter 2020-82, August 4, 2020** – This provides for the guidelines on the suspension of reglementary periods during the Modified Enhanced Community Quarantine (MECQ) period from 4 to 18 August 2020.
- **Circular Letter 2020-81, August 3, 2020** – This provides for the guidelines on the operations of regulated entities under the Modified Enhanced Community Quarantine (MECQ) effective August 4 to 18, 2020.

SUPREME COURT DECISION HIGHLIGHT

UPDATES

It is not required that the request for additional documents by the taxing authority be made in written form. All subsequent verbal request made by the tax authority are sufficient for the purpose of determining the reckoning point of the 120-day period.

In granting the petition, the Supreme Court (SC) held that there is no requirement in the Tax Code or in RMC No. 49-2003 that the taxing authority's request for additional documents should be made in a specific form. Stated differently, nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form. While written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials.

Here, the 120-day period should be reckoned from April 29, 2014, the time the taxpayer's corresponding submission of complete documents in response to the BIR's verbal requests for additional documents. The BIR had 120 days from such time or until August 27, 2014 to act on the taxpayer's administrative claim for refund but failed to act within such period. Thus, the taxpayer had thirty (30) days or until September 26, 2014, to file its judicial claim. Since its Petition for Review was filed before the CTA on September 25, 2014, it timely fell within the 30-day period to file a judicial claim. (*Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue, G.R. No. 244154, July 15, 2020*)

Note: *This case applies only to claims for refund prior to the effectivity of RMC No. 54-2014. Under RMC 54-2014, the taxpayer is now required to submit complete documents upon its filing of an administrative claim for VAT refund/tax credit, as no other documents shall be accepted thereafter.*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

Both the administrative and judicial claim for refund must be filed within the 2-year prescriptive period from the time of payment of tax.

The taxpayer filed an appeal, by way of Petition for Review, before the CTA Division against the inaction of the BIR on its claim for refund of the alleged erroneously collected Capital Gains Tax (CGT).

In ruling against the taxpayer, the CTA ruled that since both the administrative and judicial claims for refund refer to "erroneously or illegally collected" internal revenue taxes, both claims must be filed within the 2-year period. The 2-year prescriptive period commences to run from the time the refund is ascertained, *i.e.*, the date such tax was paid, and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes. The period for filing of both administrative and judicial claims for refund is not only mandatory but also jurisdictional.

Here, since the taxpayer paid the CGT on July 5, 2013, it had two (2) years therefrom or until July 5, 2015 within which to file both its administrative and judicial claims for refund. Thus, the filing of taxpayer's administrative and judicial claims for refund on July 3, 2018 and July 6, 2018, respectively, was beyond the 2- year prescriptive period under the 1997 NIRC, as amended. (*Euroversal Properties, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9869, August 3, 2020*)

Note: *In this case, although the seller is the statutory taxpayer of the CGT, the actual cash used to pay the same came from the buyer which withheld it from the purchase price and correspondingly remitted it to the BIR. Thus, with the rescission of the Contract to Sell, it was the seller, that had the obligation to retribute the initial down payment as well as the CGT advanced by the buyer on its behalf. It is the buyer not the seller that can actually raise a howl based on equity and not the seller.*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

When initial assessment is already made in the manner prescribed by law, the BIR is not authorized to issue another assessment beyond the five-year prescriptive period.

The BIR has assessed the taxpayer for the second time by issuing a Letter Notice (LN), despite prior assessment made by the former through an LOA, for the glaring discrepancy between the actual sales reported in the ITR and the sales in the VAT returns.

The Court said that considering that the BIR assessed the taxpayer for all internal revenue taxes and the taxpayer has paid the same, said discrepancy between the actual sales reported in its ITR and the sales in its VAT returns could not have escaped its scrutiny. The BIR already sifted through taxpayer's books of accounts and thus had ample opportunity to make a complete assessment and come up with the findings of deficiency taxes. It has even issued a termination letter

While all presumptions are in favor of the correctness of a tax assessment, it would be unfair to subject a taxpayer to another audit and assessment especially if the second assessment is already beyond the prescribed period to assess. Also, the second assessment is only anchored on an LN and not an LOA. Thus, the second assessment is void. *(ED & F Man Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 9577 & 9739, August 5, 2020)*

As part of due process in the issuance of tax assessments, the PAN and FLD must show, among others, in detail the facts on which the assessment is based; otherwise said assessment shall be void.

The CTA held that one of the due process requirements in the issuance of tax assessments is that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD and FAN. In case the BIR fails or effectively fails to observe, *inter alia*, the said requirement, it shall have the effect of rendering the subject deficiency tax assessment void, and of no force and effect, since such failure violates the due process rights of the concerned taxpayer.

Here, the BIR totally ignored the request of the taxpayer to be informed of the factual bases of the subject withholding tax assessments. Apparently, the BIR never, at any point, explained or showed how the figures reflected in the said undated PAN, as well as in the FLD and FANs, as the bases for the withholding tax assessments, were determined, thereby violating taxpayer's right to due process. *(Morning Star Milling Corporation v. Commissioner of Internal Revenue, CTA Case No. 9294, August 26, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

The BIR is, as part of the due process requirement, duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before the issuance of FLD and assessment notice; otherwise said assessment shall be void.

The CTA ruled that a taxpayer has fifteen (15) days from receipt of the PAN to file a protest with the BIR. If during the said period, the taxpayer fails to file a protest to the PAN, it is only then that the BIR can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and assessment notice, which shall be subsequently served to the said taxpayer.

Here, the PAN was issued on December 28, 2012 but the taxpayer received it only on January 10, 2013, and that before it could respond to the PAN, it received the BIR's FAN and FLD on January 15, 2013, which is only five (5) days from January 10, 2013, taxpayer's alleged date of receipt of the PAN. Thus, the assessments issued in this case are void, and all the proceedings and orders emanating therefrom are likewise void. (*Jollibee Worldwide Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 9005, August 26, 2020*)

The taxpayer should not wait for the BIR to come up with a decision after the lapse of the 120-day period it must file a judicial appeal with the CTA within 30 days from the expiration of the 120-day period.

In ruling against the taxpayer, the CTA held that the judicial claim shall be filed within a period of 30 days after the receipt of the BIR's decision or ruling, or after the expiration of the 120-day period, whichever is sooner. In case the BIR fails to act on the taxpayer's administrative claim for tax credit or refund within the 120-day prescribed period, the taxpayer may treat such inaction as a denial of its claim. Thus, the taxpayer should no longer wait for the BIR to come up with a decision before it files an appeal to the CTA. Any claim filed in a period less than or beyond the 120+30 days provided by the 1997 NIRC, as amended, is outside the jurisdiction of the CTA.

Here, the taxpayer filed a judicial claim beyond the 30-day period prescribed under Section 112(C) of the 1997 NIRC, as amended. Thus, the same fell outside the jurisdiction of the CTA. (*Lantro Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9436, August 26, 2020*)

Note: Section 112 (c) of the NIRC, as amended by the TRAIN Law, no longer expressly provides the remedy of elevating the unacted claim after the expiration of the 120-day period (now 90 days).

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

Any re-assignment/transfer of cases to another Revenue Officer (RO) or another group of ROs requires the issuance of a new Letter of Authority (LOA).

In ruling in favor of the taxpayer, the CTA held that all audit investigations must be conducted by a designated RO, duly authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA and that in case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA shall be issued in favor of the latter.

Here, the revenue officer and the group supervisor authorized to examine the taxpayer's books of accounts for all internal revenue taxes in the LOA were different from those who continued the examination of said books of accounts and other accounting records as shown in the Notice of Continuance of Audit/Investigation issued by Revenue District Officer. Further, the authority to continue the audit of the taxpayer's books of accounts and accounting records by the new revenue officer and group supervisor was merely given through a Memorandum of Assignment, and not through an LOA. Hence, the resulting assessments for the deficiency taxes were void for lack of a valid LOA. (*Integrated Solutions Technology Limited v. Commissioner of Internal Revenue*, CTA Case No. 9608, August 26, 2020)

It is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes.

The CTA held that the only BIR officials authorized to issue and sign Letters of Authority (LOA) are the Regional Directors, the Deputy Commissioners and the Commissioner. Considering that only the said officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Hence, a Revenue District Officer does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA. Thus, considering that the revenue officers named in the LOA were different from those who actually examined taxpayer's books of accounts and other accounting records, the assessment issued against taxpayer shall be void.

Absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity. (*Scicindustrial Corp. v. Bureau of Internal Revenue*, CTA Case No. 9616, August 27, 2020)

BIR ISSUANCES HIGHLIGHTS

UPDATES

Revenue Regulations No. 20-2020, August 17, 2020 - This amends certain provisions of Revenue Regulations (RR) No. 6-2013 in relation to RR No. 6-2008 relative to the imposition of tax for the sale, barter, exchange or other disposition of shares of stock not traded through the local stock exchange.

The rules are as follows:

- a. For common shares of stock, the book value based on the latest available financial statements duly certified by an independent public accountant prior to the date of sale, but not earlier than the immediately preceding taxable year, shall be considered as the prima facie fair market value.
- b. For preferred shares of stock, the liquidation value, which is equal to the redemption price of the preferred shares as of balance sheet date nearest to the transaction date, including any premium and cumulative preferred dividends in arrears, shall be considered as fair market value.
- c. In case there are both common and preferred shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of outstanding common shares as of balance sheet date nearest to the transaction date.
- d. For this purpose, the book value of the common shares of stock or the liquidation value of the preferred shares of stock need not be adjusted to include any appraisal surplus from any property of the corporation not reflected or included in the latest audited financial statements, in order to determine the fair market value of the shares of stock. The latest audited financial statements shall be sufficient in determining the fair market value of the shares of stock subject of the sale, barter, exchange, or other disposition.

BIR ISSUANCES HIGHLIGHTS

UPDATES

Revenue Memorandum Order No. 26-2020, August 11, 2020 - This prescribes the use of the revised Exchange of Information (EOI) Working Manual by the EOI Unit of the International Tax Affairs Division (ITAD) and by all officers of the BIR whose functions relate to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information provision of the relevant tax treaty.

The revised EOI Working Manual contains the streamlined internal processes related to incoming, outgoing and spontaneous EOI requests. The differences between the old and revised EOI Working Manuals are as follows:

Old EOI Working Manual	Revised EOI Working Manual
Only the Commissioner could sign EOI documents	The following officials are now allowed to sign EOI documents on behalf of the Commissioner: <ul style="list-style-type: none"> a. <u>Division Chief, ITAD</u> - Acknowledgment letter to foreign tax authority b. <u>ACIR, Legal Service</u> - Letter to Government Agencies, Letter to BIR Offices, Partial Reply to Foreign Tax Authority, and Final Reply to Foreign Tax Authority <u>DCIR, Legal Group</u> - Letter to Banks and Other Financial Institutions, and Outgoing EOI Requests
Request for information was only for the purpose of assessment of taxes	Request for information may relate to assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information provision of the relevant tax treaty.
For banking information, notification to the accountholder shall be made within sixty (60) days from receipt of the letter of request	The provisions of RR No. 22-2018 have already been included in the revised EOI Working Manual. It mandates the sending of notice to the taxpayer only after receipt of communication from the requesting jurisdiction that the investigation has already attained finality in cases where notification is

BIR ISSUANCES HIGHLIGHTS

UPDATES

	likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction, and the requesting jurisdiction has substantiated its request for a deferment of the notification based on these grounds.
Group request was not included	The manner of initiating an EOI group request was already included in compliance with the EOI standard.
The period provided within which to provide the information is usually 60 days, subject to extension for another 30 days	The requested office or taxpayer shall be given a shorter period (usually 30 days) within which to provide the information, subject to extension which shall not exceed 30 days.
	The Model Templates were likewise revised, especially the template for outgoing EOI.

Revenue Memorandum Order No. 27-2020, July 21, 2020 - This prescribes the BIR Digital Transformation (DX) Roadmap for 2020-2030, which enumerates the programs, outcomes and corresponding timelines that will help the BIR in carrying out its mission to improve revenue collections to fund the national government programs and initiatives under the 10-Point Socio Economic Agenda.

The BIR DX Roadmap Phases shall be composed of four (4) major programs with corresponding initiatives, as follows:

- a. Innovating TP Experience with BIR Service processes – for elevating taxpayer experience and innovating BIR processes;
- b. Enhancing Administration and Support Services of BIR – for driving efficiency on BIR internal processes;
- c. Aligning policies to a BIR Digital Workplace – for reformulating BIR policies and National Internal Revenue Code to enable DX in BIR;
- d. Enabling the Digital Backbone of BIR – for adopting and integrating digital technology in BIR.

BIR ISSUANCES HIGHLIGHTS

UPDATES

Revenue Memorandum Order No. 28-2020, July 10, 2020 - This prescribes the updated policies and procedures for the granting and revocation of system access.

The said policies and procedures are as follows:

- a. Users shall accomplish the appropriate Access Request form depending on the type of request, namely: BIR Form No. 0044 for System Access/Access Revocation Request and BIR Form No. 0043 for eFPS Access Request.
- b. Attendance to Information Security Awareness Briefing is prerequisite before system access can be granted to newly-hired employees and BIR Service Providers. BIR Service Providers shall be given access only upon submission of approved Non-Disclosure Agreement and signed contract. They shall only be granted special/temporary access with justification from the Head of Office/Project Manager.
- c. BIR officials and employees who are subject of regular movement, whether by reason of promotion, reassignment, leave of absence for thirty (30) days or more, resignation or transfer/secondment to other government agencies, instrumentalities/office within BIR, shall request for revocation of access.
- d. The accomplished/signed Access Request form and attachment shall be submitted to the Security Management Division (SMD) for Contractors/National Office users, except Large Taxpayers Service (LTS), and to the concerned Revenue Data Center (RDC), for regional users including LTS.
- e. The Personnel Adjudication Division (PAD) shall furnish the SMD a copy of the approved order of suspension/dismissal from the Office of the Commissioner (OCIR), Ombudsman, Civil Service Commission (CSC) or any judicial or quasi-judicial administrative body within three (3) days from receipt of the approved order, for processing of revocation/suspension of account privileges.
- f. Request for special access shall be justified or endorsed by the Head of Office/Project Manager.

BIR ISSUANCES HIGHLIGHTS

UPDATES

- g. A request for access shall not be processed/granted if the user has any existing system access account from his/her previous place of assignment, unless a corresponding approved revocation of access form is submitted, together with the current request for access form.
- h. The procedures for the processing of requests for password reset/unlocking of account; creation/ modification/deletion of role; and the periodic review and maintenance of user accounts are specified in the Order.

Revenue Memorandum Circular No. 79-2020, August 5, 2020 - This provides the guidelines for the filing of various returns and payment of tax due thereon by taxpayers under the jurisdiction of National Capital Region (NCR), Bulacan, Cavite, Laguna and Rizal during the period of Modified Enhanced Community Quarantine (MECQ).

The relevant guidelines are as follows:

- a. All concerned taxpayers duly registered under the jurisdiction of Revenue District Office (RDO) Nos. 24 to 34 and 38 to 54B may file their tax returns and pay the internal revenue taxes at the nearest Authorized Agent Banks (AABs), notwithstanding RDO jurisdiction.
- b. Said taxpayers may also file and pay the corresponding tax to the concerned Revenue Collection Officers (RCOs) of the nearest RDO, even in areas where there are AABs, provided that payment of internal revenue taxes in cash should not exceed Twenty Thousand Pesos (₱20,000.00) while check payment will have no limitation if the same is made with the RCO in the district office.
- c. Provided further, that all checks shall be made payable to Bureau of Internal Revenue (with or without "Name and TIN of the taxpayer" written on the check, as previously required), and that the name and branch of the receiving AAB may no longer be indicated therein.

BIR ISSUANCES HIGHLIGHTS

UPDATES

Revenue Memorandum Circular No. 80-2020, August 6, 2020 - This amends the RDO covered by RMC No. 79-2020 by including RDO Nos. 55 to 57.

This Circular amends the RDO covered by RMC No. 79-2020 by including RDO Nos. 55 to 57.

Revenue Memorandum Circular No. 81-2020, August 5, 2020 - This provides the clarification on Annex 4 – Citizen/Client Satisfaction Survey (CCSS) of the Inter-Agency Task Force (IATF) Memorandum Circular No. 2020-1 by the Secretary of the Department of Budget and Management (DBM).

This clarifies the guidelines and requirements in accomplishing the Agency/Citizen Client Satisfaction Survey (CCSS) Report and Agency Best Practice Report in relation to the grant of the Performance-Based Bonus (PBB) for Fiscal Year (FY) 2020.

BIR ISSUANCES HIGHLIGHTS

UPDATES

Revenue Memorandum Circular No. 82-2020, August 10, 2020 - This prescribes the guidelines on the use of the electronic Audit Financial Statements (eAFS) System for the submission of attachments to the Income Tax Returns (ITRs) of taxpayers with Fiscal Year Accounting Period and in the submission of attachments to the quarterly ITRs.

The guidelines are as follows:

- a. All concerned taxpayers availing the facilities of the eAFS System shall scan the required documents and comply with the procedures specified in the Circular.
- b. Taxpayers shall keep the original copies of the digitally submitted documents in accordance with Section 203 of the NIRC for the period, as prescribed under Revenue Regulations No. 17-2013. Provided that the same shall be presented, upon request, to the BIR.

Revenue Memorandum Circular No. 83-2020, August 6, 2020 – This addresses the issues and concerns of taxpayers regarding the tax implications of measures being implemented to prevent the spread of COVID-19 on cross-border matters.

The guidelines are as follows:

Income from Employment

The residence State has an exclusive right to tax the employment income derived by its resident taxpayers, except when the employment is exercised in another Contracting State, in which case, the latter State may tax the employment income subject to the provision of relief by the former State.

However, even if employment is exercised in the Philippines, the employment income will not be subject to tax in the Philippines if the following conditions concur:

- a. The employee has *not* been present in the Philippines for more than 183 days (more than 120 days for residents of

Poland; at least 90 days for residents of the United States of America) in aggregate in the year of income, fiscal year, calendar year, or any twelvemonth period, depending on the applicable DTA;

- b. His/her remuneration is paid to him/her by, or on behalf of, an employer that is *not* a resident of the Philippines; and
- c. His/her remuneration is *not* deductible against the profits of a permanent establishment which the foreign employer has in the Philippines.

Conversely, the Philippines may tax the employment income of an individual who is a resident of another contracting state only if any of the following three tests is met:

- a. The employee is present for more than 183 days (more than 120 days for residents of Poland; at least 90 days for residents of the United States of America) in the Philippines; or
- b. The employer is a resident of the Philippines; or
- c. A non-resident employer has a permanent establishment in the Philippines which bears the remuneration.

Special Tax Residency Rules

Where an individual is prevented from leaving the Philippines on his or her scheduled day of departure as a result of the travel restrictions imposed by the government, the individual will not be regarded as being present in the Philippines for tax residence purposes for the period after the scheduled day

of departure. It is considered as "force majeure" for the purpose of establishing such individual's tax residence, provided that he or she leaves the Philippines as soon as the circumstances would permit, such as when the travel restrictions and/or quarantine measures have been lifted.

BIR ISSUANCES HIGHLIGHTS

UPDATES

Inadvertent Creation of Permanent Establishment (PE)

The effects of COVID-19 will not result in the creation of a PE if the following requirements are met:

- a. The non-resident foreign company did not have a permanent establishment in the Philippines before the effects of COVID-19;
- b. There are no other changes in the company's circumstances save for the extended stay of its employee, partner or agent in the Philippines because of travel restrictions; and
- c. The employee, partner or agent should leave the country as soon as the circumstances would permit.

Revenue Memorandum Circular No. 84-2020, August 27, 2020 - This disseminates Republic Act (RA) No. 11453 and RA No. 11457.

This circularizes RA No. 11453 entitled "An Act Further Strengthening the Powers and Functions of the Authority of the Freeport Area of Bataan (AFAB), Amending for this Purpose RA No. 9728, Otherwise known as the 'Freeport Area of Bataan (FAB) Act of 2009) and RA No. 11457 entitled "An Act Creating the Davao International Airport Authority, Transferring Existing Assets of Francisco Bangoy International Airport to the Authority, Vesting the Authority with Power to Administer and Operate the Francisco Bangoy International Airport and Appropriating Funds Therefor."

Revenue Memorandum Circular No. 85-2020, August 27, 2020 - This disseminates RA No. 11321.

This circularizes RA No. 11321, entitled "An Act Instituting the Farmers and Fisherfolk Enterprise Development Program of the Department of Agriculture".

Revenue Memorandum Circular No. 86-2020, August 27, 2020 - This disseminates RA No. 11291.

This circularizes RA No. 11291 entitled "An Act Providing for a Magna Carta of the Poor".

BIR ISSUANCES

HIGHLIGHTS

UPDATES

Revenue Memorandum Circular No. 87-2020, August 27, 2020 - This disseminates RA No. 11335.

This circularizes RA No. 11335 entitled "An Act Converting the Guimaras State College in the Province of Guimaras into a State University to be known as the Guimaras State University, and Appropriating Funds Therefor".

Revenue Memorandum Circular No. 88-2020, August 27, 2020 - This disseminates RA No. 11334.

This circularizes RA No. 11334 entitled "An Act Converting the Marinduque State College in the Municipality of Boac, Province of Marinduque into a State University, to be known as the Marinduque State University, and Appropriating Funds Therefor".

Revenue Memorandum Circular No. 89-2020, August 27, 2020 - This disseminates RA No. 11336.

This circularizes RA No. 11336 entitled "An Act Converting the Carlos Hilado Memorial State College in the City of Talisay, and all its Satellite Campuses located in the City of Bacolod and in the Municipality of Binalbagan, all in the Province of Negros Occidental, into a State University to be known as The Carlos Hilado Memorial State University, and Appropriating Funds Therefor".

Revenue Memorandum Circular No. 90-2020, August 27, 2020 - This disseminates RA No. 11259, RA No. 11284, and RA No. 11283.

This circularizes RA No. 11259 entitled "An Act Dividing the Province of Palawan into Three (3) Provinces, namely: Palawan del Norte, Palawan Oriental and Palawan del Sur", RA No. 11284 entitled "An Act Converting the Northern Bukidnon Community College in the Municipality of Manolo Fortich, Province of Bukidnon, into a State College to be Known as the Northern Bukidnon State College, and Appropriating Funds Therefor", and RA No. 11283 entitled "An Act Converting the Camarines Sur Polytechnic Colleges in the Municipality of Nabua, Province of Camarines Sur into a State University to be Known as the Polytechnic State University of Bicol, and Appropriating Funds Therefor".

Revenue Memorandum Circular No. 91-2020, August 27, 2020 - This disseminates RA No. 11328.

This circularizes RA No. 11328, entitled "An Act Separating the Sitios of Guina-ang, Madopdop, Mallango, Lanlana and San Pablo from Barangay Lacnog, City of Tabuk, Province of Kalinga and Constituting Them into a Separate and Independent Barangay to be known as Barangay Lacnog West".

SEC ISSUANCES HIGHLIGHTS

UPDATES

MC NO. 24 S. 2020, August 24, 2020 – This provides for the guidelines on posting of additional securities deposit, substitution of securities deposit and change of resident agent.

The Circular extended the deadline for posting of additional securities deposit and substitution of securities deposit to align the same with the extended deadline of the AFS, subject to the following guidelines:

1. Posting of additional securities deposit for branch offices whose submission of AFS was extended pursuant to MC Nos. 17 and 18, s. 2020 shall be extended until October 29, 2020.
2. Securities deposit that matured during the period of extension pursuant to MC nos. 17 and 18, s. 2020 shall be extended until October 29, 2020.
3. Said extensions shall automatically be applied without need for a request from the affected branch offices.
4. For corporations incorporated prior to February 23, 2019, the adjustment in the computation of additional securities deposit based on the new figures of Sec. 143 of the RCC and compliance with the increase in initial deposit amounting to Five Hundred Thousand Pesos (P500,000.00) will commence on August 1, 2021, unless the foreign corporation opts to comply the minimum amount of Five Hundred Thousand Pesos (P500,000.00) imposed by the RCC.
5. For foreign corporations licensed on February 23, 2019 or onwards, the minimum of Five Hundred Thousand Pesos (P500,000.00) shall be imposed, as required by Sec. 143 of the RCC. Any additional securities deposit for these corporations shall adopt the adjustment in the computation based on the figures of Sec. 143 of the RCC.

Applications on request for change of resident agent filed and reviewed before March 16, 2020 with issued Payment Assessment Form (PAF), those filed before the quarantine period but issued a PAF during the quarantine period and those filed and reviewed during the quarantine period without issuance of PAF will not incur penalty if payment of appropriate fees are made on or before September 30, 2020. Hence, penalty shall commence to run on October 1, 2020.

SEC ISSUANCES HIGHLIGHTS

UPDATES

***MC NO. 23 S. 2020,
August 18, 2020 – This
provides for the rules
on corporate debt
vehicle.***

Corporate Debt Vehicle (CDV) is a new investment vehicle. It is a closed-end investment company to be offered to any number of Qualified Buyers (QB) and/or non-Qualified Buyers (non-QBs) not exceeding nineteen persons in the Philippines during the twelve-month period with the specific objective of investing in the Corporate Debts of large corporations and medium-sized enterprises. A CDV must comply with the minimum requirements for the incorporation and registration. A notarized simplified Prospectus made in accordance with the Guidelines for CDV and which provides the minimum disclosures required, and Product Highlight Sheet shall be submitted to and approved by the SEC prior to the commencement of the offer.

***MC NO. 22 S. 2020,
August 18, 2020 – This
provides for the
guidelines on corporate
term, under Section 11
of the Revised
Corporation Code of
the Philippines (RCC).***

The corporate term of a corporation with certificate of incorporation issued prior to the effectivity of the RCC and which shall continue to exist shall be deemed perpetual upon the effectivity of the RCC, without any action on the part of the corporation. The corporation may, however, amend the Articles of Incorporation to reflect its perpetual corporate term subject to the payment of filing fees and voting requirements required by law and regulations. If the corporation elects to continue with its corporate term as provided in the Articles of Incorporation, it shall file and submit a Notice with attached Director's Certificate to the SEC within a period of two years from February 23, 2019 otherwise, it shall be treated as perpetual after the lapse of the two-year period.

Corporations that were incorporated prior to the effectivity of the RCC and those incorporated under the RCC may extend or shorten the corporate term or change the specific corporate term to perpetual corporate term or vice versa by amending their Articles of Incorporation subject to the voting requirements provided by law and regulations.

SEC ISSUANCES HIGHLIGHTS

UPDATES

MC NO. 21 S. 2020, August 11, 2020 – This provides for the rules on simplified on boarding procedures for low risk accounts open and maintained by customers of SEC-regulated Financial Intermediaries (FI).

The Circular states that a Low Risk Account is an account opened and maintained by an individual Filipino investor who shall be presumed to beneficially own the said account with an initial and subsequent deposit, investment or re-investment amounting to an aggregate of not more than Php 50,000. An investor thereof may invest in excess of the prescribed limit only for the purpose of exercising his right as a holder of securities. A regulated FI shall implement measures to establish the true identity and existence of its customers and the same may be conducted before, during or after the opening of the account but no later than 15 days from the date the account is opened.

Furthermore, a regulated FI shall adopt the necessary policies and processes in systematically reviewing whether an account shall retain a low risk status or be elevated to a normal/regular or high-risk status. Upon determination that an account ceases to be a low risk account, normal/regular or enhanced CDD, as the case may be, shall be immediately conducted and the same shall be completed within one month.

MC NO. 20 S. 2020, August 11, 2020 – This provides for SEC rules on the number of independent directors and sectoral representatives of exchanges and other organized markets.

Independent Directors shall constitute at least 1/3 of the members of the board of directors of exchanges and other organized markets. Said independent director shall have the relevant experience in or working knowledge of the capital or financial markets for at least three years prior to his election.

As regards Sectoral Representatives, there shall be at least four persons representing the interests of issuers, investor, and other market participants, with each sector having at least one representative, in the board of directors of an exchange or other organized market. A person who is elected as director to represent a sector shall have had the relevant experience in or working knowledge of the related sector and the capital or financial markets for at least three years prior to the person's election. Said person may be elected as director for a maximum period of ten years with a mandatory cooling off period of at least one year after the first five years.

SEC ISSUANCES HIGHLIGHTS

UPDATES

MC NO. 19 S. 2020, August 6, 2020 – This provides for the signatories of the Manual on Corporate Governance (MCG) and penalty for noncompliance with the requirement.

Public Companies and registered issuers are mandated to submit a new MCG pursuant to SEC MC. No. 24, s. 2019 within 6 months from the effectivity date thereof, or until July 12, 2020. However, due to the COVID-19 situation, the deadline for the submission of the MCG was extended to September 30, 2020. MCGs with incomplete and/or incorrect signatories shall be deemed as not filed. The imposable penalties for non- or late submission of MCG shall be as follows:

Basic Penalty- Php 10,000
Monthly Penalty- Php 1,000

Further, the Circular resolved that the signatories of the MCG shall be the company’s Chairman of the Board and Compliance Officer.

NOTICE, dated 11 August 2020 – Extension of Deadlines and Interim Procedures for the submission of printed/hard copies of annual reports.

A. Annual Financial Statements

FISCAL YEAR END	PREVIOUSLY ADJUSTED DEADLINE	NEW FILING DEADLINE
30 November 2019 or 31 December 2019 Note: regardless of SEC registration or license numbers		30 September 2020
31 January 2020	29 July 2020	28 August 2020
29 February 2020	27 August 2020	28 September 2020
31 March 2020	27 September 2020	27 October 2020
30 April 2020	12 October 2020	11 November 2020

FISCAL YEAREND	ORIGINAL DEADLINE	NEW FILING DEADLINE
31 May 2020	28 September 2020	28 October 2020
30 June 2020	28 October 2020	27 November 2020

B. General Information Sheet

Corporations, which held their annual stockholders' or members' meetings during the previously imposed ECQ or MECQ, shall have until 30 September 2020 to submit the printed or hard copies of their GIS to the SEC Main Office and Extension Offices.

Filing may be made to the SEC Main Office, SEC Extension Offices or Email Submissions (Optional) subject to the requirements and qualifications provided by the SEC.

BSP ISSUANCES

HIGHLIGHTS

UPDATES

BSP Circular No. 1093 dated August 20, 2020 – This contains amendments to the Manual of Regulations for Banks (MORB) on the real estate limits of universal and commercial banks (UBs/UKs) and thrift banks (TBs).

For UBs and UKs, total real estate loans shall not exceed twenty five percent (25%) of the total loan portfolio net of interbank loans. A Real Estate Stress Test (REST) Limits is a prudential limit set for real estate exposures of UBs/KBs. For this purpose, the stress test will be undertaken on a UBs/KBs Real Estate Exposures (REEs) under an assumed write-off of twenty-five percent (25%). If the UB/KB does not meet either or both the REST limits, it shall incorporate assessment of risks from this exposure in its Internal Capital Adequacy Assessment Process (ICAAP).

For TBS, a prudential limit is set for real estate exposures. For this purpose, a stress test will be undertaken on the TB's REEs under an assumed write-off of twenty-five percent (25%). If a TB which is a subsidiary of a UB/KB doesn't meet either or both the REST limits, it shall incorporate assessment of risks from this exposure in the group-wide ICAA of its parent UB/KB. If a TB which is not a subsidiary of a UB/KB does not meet either or both the REST limits, it shall incorporate assessment of risks from this exposure in its capital planning process.

Circular Letter No. CL-2020-041 dated August 28, 2020 – This contains the operational relief measures covering prescriptive period and processing feed under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended.

With reference to Circular No. 1080 dated 27 March 2020 and in light of the declaration of the community quarantine by the Office of the President amidst the spread of coronavirus disease 2019 (COVID-19), the following operational relief measures shall be enforced for the duration covered by Circular No. 1080 and up to one (1) month thereafter:

1. The Prescriptive periods for submission of: (a) application for registration of foreign investments; (b) Notice to BSP for new foreign loans/borrowings and any changes in the loan's/borrowings financial terms and conditions; and (c) application for registration of foreign loans/borrowings, are temporarily lifted.
2. Applicable processing feed under Appendix 20 of the FX Manual covering: (a) registration of foreign investments; (b) approval/registration of foreign/foreign currency loans/borrowings with or without FX obligations due; and (c) replacement of lost Bangko Sentral Registration Documents (BSRD) for loans and investments, filed during the period covered by Circular No. 1080 and up to one (1) month thereafter shall be waived.

BSP ISSUANCES HIGHLIGHTS

UPDATES

Circular Letter No. CL-2020-040 dated August 8, 2020 – This is addressed to all non-bank financial institutions with quasi-banking functions and/or trust authority for the publication/posting of Statement of Condition and/or Consolidated Statement of Condition.

The Circular Letter calls on the abovementioned institutions to publish their respective Statement of Condition side-by-side with its Consolidated Statements of Condition, if applicable, as of June 30, 2020. Publication should be made in a newspaper of general circulation in the city/province where the principal office of the institution is located. However, if no newspaper is published therein, then in a newspaper published in Metro Manila or in the nearest city/province within twenty (20) working days from the date of the Circular Letter.

The original and a copy of the Statement of Condition and/or Consolidated Statement of Condition shall be scanned and submitted in pdf format within twenty (20) working days from the date of the Circular Letter at fss-somd@bsp.gov.ph. Copies of the Statement of Condition and Consolidated Statement of Condition, as published, together with the publisher's certificate shall also be scanned and submitted to the link mentioned within five (5) working days from the date of publication.

Circular Letter No. CL-2020-039 dated August 8, 2020 – This is addressed to all trust corporations for the publication/posting of Balance Sheet (BS).

The Circular letter calls on the abovementioned institutions to publish their Balance Sheet as of June 30, 2020.

Circular Letter No. CL-2020-038 dated August 8, 2020 – This is addressed to all banks for the publication/posting of their Balance Sheet (BS) and Consolidated Balance Sheet (CBS).

The Circular letter calls on the abovementioned institutions to publish/post their Balance Sheet together with its Consolidated Balance Sheet, if applicable, as of June 30, 2020.

BSP ISSUANCES HIGHLIGHTS

UPDATES

Circular Letter No. CL-2020-037 dated August 10, 2020 – This is addressed to all BSP-Supervised Financial Institutions regarding the Anti-Money Laundering Council (AMLC) Regulatory Issuance (ARI) A No. 3 – Amendments to the AMLC Registration and reporting Guidelines on No/Low Risk Transactions of Money Service Business (MSBs).

The following list of no/low risk transactions of MSBs shall be deferred for reporting of covered transactions:

1. Pre-fund deposit and replenishment to process remittance transactions;
2. Payment of commission, charges or other operating income expenses for services rendered;
3. Foreign exchange transactions between a parent, its subsidiaries and affiliates, which are also covered persons;
4. Internal operating and capital expenses:
 - a. Lease agreement and rental payments;
 - b. Office repairs and maintenance expenses;
 - c. Purchase of furniture, fixtures and equipment;
 - d. MSBs using its remittance services to credit employees' salaries;
 - e. MSBs using its remittance services to fund its employees' travel allowances;
 - f. MSB employees using their company's remittance services to liquidate expenses, such as excess funds from previous cash advances; and
 - g. MS head offices using their company's remittance services to fund the payment expenses of their branches.
5. Payment of MSBs taxes, such as corporate income tax, value added tax and percentage tax.

Memorandum No. M-2020-066 dated August 19, 2020 – This is addressed to all BSP-Supervised Financial Institutions (BSFIs) regarding SMS-Based Attacks Targeting Customers of Financial Institutions.

The Memorandum reminds all BSFIs to intensify information security awareness and education campaigns for their employees, clients, and other relevant stakeholders against SMS-based attack such as SMiShing and SMS spoofing. BSFI should revisit multi-factor authentication (MFA) controls implementation to address inherent vulnerabilities and weaknesses arising from SMS-based sending of one-time PINs (OTPs). Also, BSFIs should adopt multi-layer controls such as, but not limited to, calibration of fraud management system rules and parameters and conduct of threat hunting exercises to detect unusual activities and takedown phishing sites.

BSP ISSUANCES HIGHLIGHTS

UPDATES

Memorandum No. M-2020-065 dated August 18, 2020 – This is addressed to all Non-Stock Savings and Loan Associations (NSSLAs) regarding the guidelines on the classification of an NSSLA as a “Complex” NSSLA for regulatory purposes.

Complex NSSLAs shall refer to institutions declared by the Bangko Sentral as such with total assets of at least P5 billion; and having at least any one (1) of the following characteristics:

- a. With extensive membership base such as those whose membership includes employees or retirees of two or more companies/agencies/institution, and/or their relatives;
- b. With serious issue(s) on the “well-defined group” requirement under R.A. No. 8367 (Revised NSSLA Act of 1997); or
- c. With non-conventional business model, such as those using non-traditional delivery platform like electronic platforms and agents.

Memorandum No. M-2020-064 dated August 17, 2020 – This is addressed to all concerned banks regarding the documentary requirements and procedures on the use of bank asset (real property in the name of the bank) as underlying collateral for rediscounting.

DOCUMENTARY REQUIREMENTS:

1. Original Certificate of Title (OCT), Transfer Certificate of Title (TCT), or Condominium Certificate of Title (CCT);
2. Tax Declaration (TC);
3. Real Estate Tax Receipt for the current year and Tax Clearance;
4. For agricultural land measuring over five hectares, clearance from the Department of Agrarian Reform;
5. Current insurance policy and official receipt evidencing payment of insurance premium on improvements, if any;
6. Appraisal Report by an acceptable independent appraiser, dated not later than six months from date of application; and
7. Deed of Real Estate Mortgage (REM) – Bank Asset in favor of the BSP with the following attachments: i.) technical description of the properties mortgaged; and ii.) copy of Board Resolution authorizing the pledge/mortgage of the Bank’s property.

BSP ISSUANCES HIGHLIGHTS

UPDATES

Memorandum No. M-2020-062 dated August 5, 2020 – This is addressed to all BSP-Supervised Financial Institutions (BSFIs) as a reminder to ensure availability of financial services during the Modified Enhanced Community Quarantine (MECQ) Period.

As Metro Manila and other surrounding areas were reverted to MECQ, BSFIs are to ensure continuous availability of financial services to the general public. They should reinforce their operational capabilities to support the anticipated increase in account opening, as well as basic financial and payment transactions through online financial platforms. BSFIs are to ensure that basic cash services are always available through timely and adequate provisioning of cash in the ATM terminals. Lastly, BSFIs are to closely monitor other operational issues that may have significant business impact.

Memorandum No. M-2020-061 dated August 3, 2020 – This is addressed to all BSP-Supervised Financial Institutions (BSFIs) regarding the Supervisory Expectations on the Measurement of Expected Credit Losses (ECL) and the treatment of regulatory relief measures granted amid the novel Coronavirus Disease 2019 (Covid-19) Pandemic.

BSFIs shall be guided by the supervisory expectations on the measurement of ECL under the Philippine Financial Reporting Standards (PFRS) 9 considering the uncertainties brought about by the COVID-19 pandemic. The supervisory expectations provide that BSFIs that will avail of the regulatory relief measures to exclude eligible loans from past due and non-performing classifications and to stagger the booking of allowance for credit losses shall continue to report actual past due and non-performing loans and allowance for credit losses in the Financial Reporting Package (FRP) and the Capital Adequacy Ratio (CAR) Reports. The application of the regulatory relief measures shall be reflected in the supplemental report that will be submitted to the BSP.

BSP ISSUANCES HIGHLIGHTS

UPDATES

Memorandum No. M-2020-060 dated August 5, 2020 – This is addressed to all covered Non-Bank BSP-Supervised Financial Institutions (BSFIs) regarding the guidelines on the electronic submission of the Annual Report (AR) and Audited Financial Statements (AFS).

The said guidelines prescribe different e-mail addresses, report title, and file name for the AR or AFS depending on the type of institution. Submission that do not conform with the prescribed guidelines shall not be accepted and will be considered non-compliant with the BSP reporting requirements.

IC ISSUANCES HIGHLIGHTS

UPDATES

Approval of the Commission is required only if the change in the ownership of a company which indirectly owns a domestic insurance and/or reinsurance broker company would affect the ownership structure of the latter. (LO-2020-10, August 27, 2020.)

In a letter dated July 20, 2020, it requested the Commission's confirmation that no prior approval is required for a change in ownership in a company that indirectly owns an insurance/reinsurance brokerage company in the Philippines.

In Circular Letter No. 2017-09 it requires prior approval of this Commission in case of acquisition of ownership of any domestic insurance broker and reinsurance broker. In reply, the IC opined that the acquisition contemplated under the Circular is one wherein there is a change in ownership over the domestic insurance and/or reinsurance broker. Thus, it is of view that approval from this Commission is required only if the change in the ownership of a company which indirectly owns a domestic insurance and/or reinsurance broker company would affect the ownership structure of the latter. (LO-2020-10, August 27, 2020.)

The employer of a Mutual Benefit Association's member-borrower may deduct the latter's outstanding obligations from his post-service benefits pursuant to a Deed of Undertaking and Special Power of Attorney executed at the time of loan availment. (LO-2020-09, August 26, 2020.)

In a letter dated March 10, 2020, the Public Safety Mutual Benefit Fund, Inc. (PSMBFI) requested the Insurance Commission (IC) to issue a Legal Opinion on whether the members of PSMBFI can authorize their employers to deduct outstanding obligations from their post-service benefits. Per PSMBFI's letter, there are instances wherein PNP Personnel optionally retires from service and at the time of their retirement, has outstanding obligation with PSMBFI. The payments due after retirement could not be effected against the personnel's post service benefits for lack of any legal provision in the Insurance Code authorizing the same. Note should be taken that at the time of loan availment, the member-borrower executed a Deed of Undertaking and a Special Power of Attorney authorizing the PNP to deduct his outstanding obligation from his post-service benefits such as Commutation of Accumulated Leave, Lump Sum/Retirement Benefits and/or Pension.

The IC opined that the employer of PSMBFI's member-borrower may deduct the member-borrower's outstanding obligations from the latter's post-service benefits in accordance with the Deed of Undertaking and the Special Power of Attorney executed at the time of loan availment which authorized the employer to make such deductions. Notwithstanding the lack of a specific provision in the Insurance Code allowing the said deduction, there is also no provision,

which prohibits the employer from making the deductions. Furthermore, since a loan is a contract, the parties may make stipulations that are not contrary to laws and regulations.

Hence, considering that the member-borrower has given their employer express authority to deduct outstanding obligations from their post-service benefits, there is therefore no legal impediment to the employer making such deductions. (LO-2020-09, August 26, 2020.)

Inclusion of a Surety Company in the Negative List of the GPPB results in the rejection of the surety bonds it issued. (LO-2020-08, August 19, 2020.)

In a letter dated February 10, 2020, the Department of Public Works and Highways (DPWH) requested the Insurance Commission (IC) to issue a Legal Opinion with regard to the effect of inclusion of a Surety Company in the Negative List of the Government Procurement Policy Board (GPPB).

The IC opined that pursuant to the Guidelines for the Establishment of Negative List of Surety and/or Insurance Companies, the effect of Inclusion in the Negative List posted in the website of the GPPB are the following:

1. It shall result in the rejection of the surety bonds issued by the suspended surety/insurance company submitted as bid, performance or warranty security in the relevant procurement activities of NGAs, GOCCs, GFIs, SUCs and LGUs during the period of inclusion and suspension.
2. The Bids and Awards Committee (BAC) shall ensure that surety bonds issued as bid, performance or warranty security submitted are not issued by surety companies included in the list. Any bidder who submits a surety bond issued by a surety company in the Negative List shall be declared ineligible.
3. Considering that surety companies are subject to the jurisdiction and supervision of the IC, the list may serve as basis for the pursuit of complaint/s filed before the IC, if any.

Thus, the procuring entity has the right to reject the security or bond issued by Surety should it be found in the GPPBs Negative List during the time it has been acquiring its services. (LO-2020-08, August 19, 2020)

IC ISSUANCES HIGHLIGHTS

UPDATES

The fine imposed by the Insurance Commission (IC) in relation to an administrative case filed against an insurance company is payable to the IC and not to the complainants. (LO-2020-07, August 7, 2020.)

In a letter dated June 22, 2020, Dragon Construction, Inc. (DCI) requested the IC to issue a Legal Opinion relative to the correct interpretation of Sections 241, 243 and 442 of the Insurance Code, particularly on when the date or period of counting of penalties validly starts. This is in relation to a Decision rendered in an administrative case against BF General Insurance Corporation where the IC found the latter liable and subjected it to a fine of P500 per day until satisfactory settlement of the claim is presented.

The IC in reply, made clear that the subject of the query here is the fine imposed by the IC against BF General Insurance Company Inc., and which is payable to the IC pursuant to Section 415 of the Insurance Code. This being the case, the terms of payment of the said fine, including the accrual thereof, is of no interest to DCI. (LO-2020-07, August 7, 2020.)

The insurer of the guilty party may validly require the insured in a motor car insurance policy to submit a Certificate of No Claim secured from the third-party insurer in relation to such claim. Failure to submit the Certificate of No Claim can delay the claims process or if warranted after investigation, deny the claim for third-party property damage. (LO-2020-06, August 7, 2020.)

In a letter received by the Insurance Commission (IC) on February 4, 2020, it requested the IC to issue a Legal Opinion relative to the propriety of the insurer of the guilty party requiring the submission of a Certificate of No Claim from the third-party claimant in the event of a motor insurance claim arising from third-party property damage.

The IC in reply, state that in case of third-party property damage claims, insurers typically require the submission of a Certificate of No Claim to prevent double claims. It is a document that certifies that the third party has not made any claims from their own insurance, thereby preventing them from filing a double claim in the future. The Certificate of No Claim being essential in the assessment of the validity and compensation of the third-party property damage claim, the insurer may thus validly require the insured in a motor car insurance policy to submit a Certificate of No Claim secured from the third-party insurer in relation to such claim. The failure to submit the same can delay the claims process or if warranted after investigation, deny the claim for third-party property damage. (LO-2020-06, August 7, 2020.)

IC ISSUANCES HIGHLIGHTS

UPDATES

Circular Letter 2020-82, August 4, 2020 – This provides for the guidelines on the suspension of reglementary periods during the Modified Enhanced Community Quarantine (MECQ) period from 4 to 18 August 2020.

This Circular suspended the reglementary periods for the filing of complaints, motions, pleadings and other submissions before the Commission's Claims Adjudication Division (CAD) and Regulation, Enforcement and Prosecution Division (REPD) from August 4 to 18, 2020, and the same shall resume on August 19, 2020, without prejudice to those who have already filed such pleadings and documents within their reglementary periods. Likewise, the periods for actions by the CAD and REPD with prescribed periods are suspended and shall resume on the same date.

Circular Letter 2020-81, August 3, 2020 – This provides for the guidelines on the operations of regulated entities under the Modified Enhanced Community Quarantine (MECQ) effective August 4 to 18, 2020.

This Circular state that entities regulated by the Insurance Commission (IC) may operate at fifty percent (50%) operational capacity in areas covered by the MECQ, while encouraging work-from-home and other flexible work arrangements, where applicable. Regulated entities seeking to resume or maintain on-site operations shall issue Certificate/s of Employment to those who will form part of their on-site workforce and shall direct their employees to bring company IDs, valid IDs and such other documents or identifications for easy determination of compliance with relevant guidelines. However, regulated entities seeking to maintain a maximum of fifty percent (50%) on-site operations in areas under MECQ shall not be required to secure a certification to that effect from the IC.



VOLUNTARY ASSESSMENT AND PAYMENT PROGRAM

By

Fulvio D. Dawilan

The Bureau of Internal Revenue is offering a program to taxpayers as a measure for the government to source additional funds needed during these unprecedented times, and at the same time providing an opportunity for taxpayers to avail of some privileges through the payment of additional taxes. This new program is covered by Revenue Regulations No. 21-2020 (RR 21-2020), dated August 18, 2020, but released a couple of days ago.

This is not the first time a program of this nature was offered by the BIR. Issuances had been made in the previous administrations, although the policies behind the programs and the features differ. Similar issuances in the past include the Voluntary Assessment Program, Economic Recovery Assistance Payment Program, Voluntary Assessment and Abatement Program, No Audit Program, among others. These differ from tax amnesties where erring taxpayers are usually granted full exoneration or immunities from civil and criminal liabilities upon availment and qualification. But these are also amnesties of sort as they provide certain reliefs and privileges to taxpayers, like relative or absolute immunity from tax audit or last priority in audit and investigation for the period and taxes covered by the program. In fact, some refer to these administrative programs as pseudo-tax amnesties.

By

Fulvio D. Dawilan

Going back to RR 21-2020, this covers all internal revenue taxes, including taxes on one-time transactions, which can be availed for the calendar year 2018 and the fiscal year 2018 ending on the last day of the months of July 2018 to June 2019. The program is available to any taxpayer, natural or juridical, including estates and trusts, but is not available to those who have already been issued final assessment notice which has become final and executory on or before the effectivity of the program. Unlike previous programs, it also extends to taxpayers currently under audit. In fact, it can be availed by taxpayers already issued final assessment notices provided that the assessment has not yet become final and executory.

Other taxpayers who are disqualified are (a) those under investigation as a result of verified information from an informer with respect to taxes that may be due out of such verified information; (b) those with cases involving tax fraud filed and pending in the Department of Justice or in the courts; and (c) those with pending tax evasion cases and other criminal offenses for violations of tax laws.

Interested taxpayers may avail of the program up to December 31, 2020 by voluntarily paying an amount computed based on prescribed percentage of their 2018 gross sales or net taxable income, whichever is higher, but shall not be lower than the prescribed minimum amount due. The percentage of the 2018 gross sales ranges from 1% to 5% and the percentage of the 2018 net taxable income ranges from 5% to 9%, both depending on the increase or decrease in total taxes due from 2017 to 2018. The minimum amount due for corporations ranges from P100,000 to P1 million, depending on the amount of subscribed capital, while the minimum amount for individuals and other juridical persons is P75,000. For withholding taxes, the voluntary payment shall be five percent of the total basic withholding tax remittance for taxable year 2018, and for one-time taxes, voluntary payment shall be the basic tax due of the unfiled tax return/unpaid tax due plus five percent. Payment shall be made in cash and not through other modes, like the application of tax debit memos.

What forms of relief do taxpayers expect from participating in the program? A taxpayer who validly avails of the program and issued a certificate of availment shall not be audited for the taxable year 2018 for the tax types covered if no audit has yet been conducted on the taxpayer. For taxpayers being subjected to audit, the examination shall be suspended while the availment is under evaluation and shall resume if found invalid. If valid, a certificate of availment shall be issued and the notice to audit or the assessments already issued shall be withdrawn and cancelled. For taxpayers participating in the program, the act of voluntary payment shall not be deemed as an admission on the part of the taxpayer that there was fraud in the declaration of its taxes and/or there was intention to pay the tax erroneously.

This is an opportunity for taxpayers who have inadvertently failed to file tax returns and/or pay correct taxes to file and pay correctly. But it is not correct to say that the program is aimed only at errant taxpayers. Even those who believe they had correctly filed tax returns and pay taxes may avail of the program to avoid the inconvenience and hassles experienced in the audits and investigations, especially during these times where there is difficulty in retrieving documents and presenting them to the tax examiners because of some restrictions in our movements. It may also be a less expensive and more effective way, both on the part of the tax authority and the taxpayers, of settling assessments that had already been issued,

VOLUNTARY ASSESSMENT AND PAYMENT PROGRAM

INSIGHTS

By

Fulvio D. Dawilan

which would otherwise be collected through enforcement efforts. So if I am asked whether or not this program is worth exploring, my answer would be yes. For the other details of the program, these may be referred to in the regulations itself and in the circulars to be issued by the BIR. Let us help you if you need guidance.

For inquiries on the article, you may call or email

ATTY. FULVIO D. DAWILAN
Managing Partner
T: +63 2 8403 2001 loc. 310
fulvio.dawilan@bdblaw.com.ph

THE BDB TEAM

OUR EXPERTS



BENEDICTA DU-BALADAD

Founding Partner, Chair & CEO
T: +63 2 403 2001 loc. 300
dick.du-baladad@bdblaw.com.ph



FULVIO D. DAWILAN

Managing Partner
T: +63 2 403 2001 loc. 310
fulvio.dawilan@bdblaw.com.ph



IRWIN C. NIDEA, JR.

Senior Partner
T: +63 2 403 2001 loc. 330
irwin.c.nideajr@bdblaw.com.ph



RODEL C. UNCIANO

Partner
T: +63 2 403 2001 loc. 140
rodel.unciano@bdblaw.com.ph



LINO ERNIE M. GUEVARA

Special Counsel
T: +63 2 403 2001 loc. 160
ernie.guevara@bdblaw.com.ph