

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).

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BIR ISSUANCES

- RMC 4-2021, December 22, 2020 – This provides for guidelines in the filing of tax returns including the required attachments and payments of internal revenue taxes.
- RMC 5-2021, December 28, 2020 – This provides simplified policies on the Application for Registration of Computerized Accounting System (CAS), Computerized Books of Accounts (CBA) and/or its components, including the Electronic Storage System (ESS), Middleware or other similar systems.
- RMC 14-2021, January 12, 2021 – This clarifies the effectivity date of RMO No. 47-2020 which imposed a new requirement for processing of VAT Refund Claims pursuant to Section 112 of the NIRC, as amended.

SEC ISSUANCES

- SEC Notice dated January 13, 2021 – This provides a reminder for the submission of "Notice to Retain Specific Corporate Term".
- SEC Memorandum Circular No. 1, Series of 2021 – This provides for the Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership ("BO Transparency Guidelines").

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BSP ISSUANCES

- BSP Circular Letter Nos. 2021-006, January 12, 2021 – This provides clarification on the guidelines on the establishment of new banks.
- BSP Memorandum No. 2021-002, January 4, 2021 – This provides regulatory relief on the Non-Imposition of Sanctions for Breach in Single Borrower's Limit by Foreign Bank Branches Established Prior to Republic Act No. 10641.
- BSP Memorandum No. 2021-004, January 11, 2021 – This provides for the retention of existing procedures on deposits and withdrawals.
- BSP Memorandum No. 2021-009, January 19, 2021 – This provides the guidelines on the Electronic Submission of the Consolidated List of Stockholders and their Stockholdings (CLSS).
- BSP Memorandum No. 2021-010, January 19, 2021 – This provides the Guidelines on the Electronic Submission of List of Members of the Board of Directors, Trustees, and Officers (LDTO).

IC ISSUANCES

- IC Circular Letter CL-2021-02 dated January 7, 2021 – This provides the revised guidelines on the declaration and/or distribution of dividends for entities regulated by the Insurance Commission.
- IC Circular Letter CL-2021-06 dated January 26, 2021 – This provides the Guidelines on the electronic submission of requests for investment approval, compliance with security deposit requirements and filing of reportorial requirements.
- IC Legal Opinion LO-2021-04, January 19, 2021 – This opinion explains when an “extended warranty” is considered as an insurance product.
- IC Legal Opinion LO-2021-03, January 21, 2021 – This opinion explains whether a duly-licensed insurance and Health Maintenance Organization (HMO) may sell their insurance/HMO products abroad.

DOF ISSUANCES

- DOF Opinion No. 011.2020 dated September 23, 2020 – A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within 30 days from the date of receipt of such ruling, seek its review by the Secretary of Finance.
- DOF Opinion No. 012.2020 dated October 21, 2020 – The waiver of taxes and fees under the FRIA Act of 2010 refer to those that are imposed upon the issuance of the Commencement Order by the court, and until the approval of the Rehabilitation plan or dismissal of the petition, whichever is earlier.

COURT OF TAX APPEALS DECISION HIGHLIGHTS

SC Administrative Circular No. 43A-2020 did not give additional days for the parties to file the Motion for Reconsideration, but only suspended the filing of the same of those falling within the period covered in the Circular.

The Court in Division granted the Petition for Review of the taxpayer and cancels the assessment of the BIR. The latter received the Decision on July 30, 2020. As such, it has until August 14, 2020 to file the MR. But the CIR filed the MR only on September 1, 2020. He argues that since the period of the reglementary period to file the MR fell on the suspension of reglementary period for the filing of, among others, motions pursuant to SC Administrative Circular No. 43A-2020, he has therefore eleven (11) more days from the implementation of the suspension which is from August 4 to 18, 2020. Adding the 11 days to August 19, 2020, he now claims that he had until August 29, 2020 (falls on a Saturday and August 31, 2020 was a legal holiday) to file the same.

The Court finds CIR's interpretation of the Circular erroneous. It is clear from the SC Circulars that while the Court was physically closed to court users from August 3 to 18, 2020, it shall still continue to receive petitions and pleadings electronically and will continue to resolve and decide cases pending before them during the said period. There is then no basis for CIR to add the number of suspended days, which totals eleven (11) days, and add the same on the date of the resumption of the reglementary period for the submission of the parties' pleadings on August 19, 2020. (*Sumitomo Corporation – Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 9422, dated January 15, 2021*)

Presentation of taxpayers' ATP in refund of unutilized input taxes is required only if such ATP is not indicated in the invoices or receipts.

CTA in Division partially granted the Petition for Review ordering the BIR to refund or issue a TCC in favor of the taxpayer. The BIR filed an MR, arguing that the taxpayer failed to present valid Authority to Print ("ATP") in relation to its tax refund citing *Silicon case*, and that the taxpayer failed to satisfy that it is engaged in zero-rated or effectively zero-rated sales.

A careful reading of the *Silicon case* reveals that the presentation of a taxpayer's ATP would only be required if such ATP is not indicated in the invoices or receipts. The Supreme Court clarified that with such non-indication, the presentation of the ATP from the BIR would be "the only way to verify whether the invoices or receipts are duly registered".

In this case, the taxpayer's official receipts and service invoices show the details of its ATP. These details demonstrate that the taxpayer has secured and obtained an ATP prior to their printing. The BIR could have easily verified the truthfulness and disproved the same, since it ought to know the tax records of all taxpayers. (*McQuarrie Offshore Services PTY LTD - Philippine Branch vs. Commissioner of Internal Revenue CTA Case No. 9469 dated January 15, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The pertinent invoices, receipts, and certificate are the best and competent pieces of evidence required to substantiate taxpayer's claim for tax refund, the ICPA Report and Schedules are merely corroborative.

The CTA in Division denied the taxpayer's claim for refund of unutilized input VAT for failing to sufficiently establish that it has zero-rated sales during the subject taxable year. In the MR, the taxpayer argues that the ICPA found and reported that the remittances to the foreign corporation were duly accounted for, and the findings reported by the ICPA, if unchallenged, should be accorded respect.

The Court in Division denied the MR. It must be pointed out that the schedules prepared by the ICPA are merely corroborative of the actual input VAT paid and the actual sales to non-resident foreign entities doing business outside of the Philippines. The pertinent invoices, receipts, and certificate are the best and competent pieces of evidence required to substantiate taxpayer's claim for tax refund. Indeed, while the taxpayer submitted several documents, the veracity of the figures as the documents presented were not sufficient to prove its action for tax refund. (*McQuarrie Offshore Services PTY LTD - Philippine Branch vs. Commissioner of Internal Revenue CTA No. 9722 dated January 14, 2021*)

There is no need for an enabling law to subject the salaries of the employees of Asian Development Bank to income tax

The taxpayers argue in their Motion for Reconsideration that under the Vienna Convention on the Law of Treaties, subsequent practice defines how a treaty shall be interpreted. The fact that the Philippine government previously failed to tax their salaries prior to issuance of RMC No. 31-13 shows that there was no intention under the ADB Chapter to tax the same without a particular law enacted to the contrary. Without such an implementing law, the taxpayers complain that the BIR has an unbridled power to tax which may be arbitrarily or whimsically exercised.

The CTA ruled that there is no need for an enabling law that would expressly subject the taxpayers' salaries to income tax. Section 23 (A) in relation to Sections 24, 31, and 32 (A)(1) of the NIRC, as Amended, specifically mandated that the income of a resident citizen, whether derived from sources within or outside of the Philippines, is subject to income tax. There is no need for another statute expressly subjecting the taxpayers' salaries to income tax since there is already an existing one. To require passage of such law would be a mere surplusage because the NIRC provisions already provide the source for the taxability of their salaries. (*Lennie de Sagun, et. al. vs. Commissioner of Internal Revenue, CTA Case No. 9084, January 14, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The Court cannot give probative value to foreign business registration documents and Company Profile Fact Sheet generated from the taxpayer's database.

The taxpayer imputes error on the part of the Court in not giving any credence to the foreign business registration printouts retrieved from AMINET database for being self-serving. BIR, on the other hand, argues that the amount disqualified from VAT zero-rating should be treated as subject to 12% VAT.

The CTA ruled that it cannot give credence or probative value to the foreign registration documents and Company Profile Fact Sheet printouts retrieved from AMINET database, a database maintained by the taxpayer's Head Office in Germany, as they are self-serving and can be easily manipulated by the taxpayer to favor it.

The CTA further ruled that the failure to comply with the invoicing requirements under Section 112 does not deem the transaction subject to 12% VAT. The SC previously ruled that since a claim for tax refund or credit under Section 112 is not a claim for refund under Section 229, the correctness of the VAT Returns is not an issue and thus there is no need for the court to determine whether the taxpayer is liable for deficiency VAT. (*Deutsche Knowledge Services, PTE. LTD. vs. Commissioner of Internal Revenue, CTA Case No. 7921, January 14, 2021*)

The start of counting of the 30-day period to appeal should be from the time it received the warrant of garnishment, and not from the time that the taxpayer was notified of its existence.

The BIR argues that the Petition for Review was filed out of time, because the 30-day period should be counted from receipt of the bank's letter since the bank already informed the taxpayer that its account has been put hold pursuant to the warrant of garnishment.

The Court, in disagreeing with the BIR, ruled that the records do not show that the taxpayer was likewise furnished with a copy of the alleged WG on the same day. Since the taxpayer only received a copy of WG on a later date, the 30-day period to file an appeal to the CTA should be counted from the receipt of such and not from the time it received letter from the bank which merely contained a notification as to the existence of WG. (*Commissioner of Internal Revenue vs. First Balfour, Inc., CTA EB No. 2116, January 14, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

A claim for exemption from payment of real property tax is actually an act of assailing the correctness of an assessment, hence, payment under protest applies.

Taxpayer was assessed by the LGU for RPT. It filed a protest, but without payment, on the ground that it was exempt from the payment of RPT. It then filed an appeal to the LBAA, but was denied. Its main contention in the CTA is that its appeal was based on Section 226 of the Local Government Code where payment under protest is not mandatory.

The CTA *En Banc* ruled that the nature of the appeal filed by the taxpayer falls under Section 252 of the LGC, and as such, payment under protest should first be complied with before filing an appeal with the LBAA. A claim for tax exemption merely raises a question on the reasonableness or correctness of the assessment, in which case the provisions of Section 252 of the LGC is required. The Supreme Court in one case held that a claim of exemption is actually an act assailing the correctness of an assessment, and as such, payment under protest applies. (*National Grid Corporation of the Philippines vs. Central Board of Assessment Appeals, CTA EB No. 1963, January 14, 2021*)

Premature issuance of FLD/FAN wantonly disregards the mandatory due process requirement laid down by law.

The PAN date January 8, 2015 was received by the taxpayer on the same date, and it replied to it on January 21, 2015. The BIR issued the FLD/FAN on January 23, 2015. The BIR argues that this does not necessarily result in violation of taxpayer's right to due process considering that it was able to intelligently contest the assessments through its letters of protest dated January 21 and February 23, 2015, respectively.

The Court denied the motion for reconsideration for lack of merit. The use of the word "shall" under the NIRC and its implementing rules underscores the mandatory character of the rule. It is clear that whenever there is a finding of any deficiency tax due from a taxpayer, the BIR is required to issue PAN. The taxpayer then is given 15 days from receipt to reply thereto. Due process requires the BIR to consider the defenses and evidence submitted by the taxpayer and to render decision based on these submissions. Here, the BIR hastily issued the FAN. (*Karina, Inc. vs. CIR, CTA Case No. 9204, January 13, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The delegated power of the ACIR to act on claims for refund is not one of the prohibited acts that the CIR cannot delegate.

The CIR moves for the early resolution of the taxpayer's claim for input tax refund on the issue of jurisdiction of the Honorable Court. He alleged that the taxpayer admitted that it received his letter of denial on June 11, 2019. Hence, the taxpayer has until July 11, 2019 within which to elevate its case to the Court. However, instead of appealing the denial of the claim with the CTA, the taxpayer filed a request for reconsideration with the CIR which was subsequently denied. The taxpayer received such denial on December 11, 2019 and, thereafter, filed the Petition for Review on January 10, 2020.

The CTA dismissed the claim for refund. It also ruled that while it is true that the denial of the claim for refund is signed by the Assistant Commissioner, this is not one of the prohibited acts that the CIR cannot delegate. As such, the reckoning period should be from the receipt of the denial on June 11, 2019 signed by the ACIR, and not on the denial of the Request for Reconsideration received on December 11, 2019 signed by the CIR. (*Nippon Express Philippines Corporation vs. CIR, CTA Case No. 10242, January 13, 2021*)

Just like the BIR in the NIRC, the local treasurer is required to issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties under the LGC.

The City Treasurer of Manila assessed the taxpayer for deficiency local business tax on the basis of reallocation of the gross revenues. It was also found that the re-computation of the assessed amount was not made through a Notice of Assessment which should have been subject to a protest under Section 195 of the LGC but was presented only to the taxpayer during the trial of the case in the RTC.

The CTA ruled that the assessment is void for lack of due process. Section 195 of the LGC is akin to Section 228 of the NIRC, as amended, which require that, in order for an assessment to be valid, "taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." It will be difficult for the taxpayer to prepare and adequate defense against such assessment if it is left in limbo guessing what was the basis for such reallocation of its gross revenues. The City Treasurer did not even bother to act on the taxpayer's protest and apprise it of her action. Without any valid assessment, there can be no valid collection of taxes. (*City Treasurer of Manila vs. New Coast Hotel, Inc., CTA AC No. 231, January 13, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The persons authorized to sign the LOAs are the CIR, Revenue Regional Director, and the Assistant Commissioner/Head Revenue Executive Assistant

The CIR contends that the assessment against the Taxpayer is valid. He explains that the authority of the revenue officer emanated from Memorandum of Assignment ("MOA") signed by the Chief of Regular Large Taxpayers Audit Division II ("RLTAD II"), who is one of the valid signatories of the MOA as provided under Revenue Memorandum Order Nos. 8-20063 and 62-2010.

However, the CTA *En Banc* ruled that the CIR failed to cite any specific provision of law or BIR Regulation to support his view that the Chief of RLTAD II is one of the authorized representatives of the CIR who can authorize the assessment and audit of a taxpayer. The RMOs cited by the CIR did not specifically identify the Chief of RLTAD II as one of the officers contemplated under *Section 6(A) of the Tax Code*. Considering that the Chief of RLTAD II is not an authorized representative of the CIR, the MOA cannot be considered an equivalent of a LOA. (*Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation CTA EB No. 2010 dated January 12, 2021*)

Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales are creditable.

The CIR contends that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded; and that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person, and, thus, purchases must in turn relate to the supplies (goods/services). In addition thereto, for input tax to be creditable, it must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

The CTA *En Banc* ruled that the law merely states that the creditable input VAT should be attributable to the zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" relates to a situation where the creditable input VAT cannot be directly attributed to any transaction. However, it does not qualify the preceding sentences of Section 112(A) of the NIRC of 1997, as amended, in such a way as to make the refundable input VAT only those which are directly attributable to zero-rated or effectively zero-rated sales. (*Commissioner of Internal Revenue v. Toledo Power Company, CTA EB No. 1990 dated January 12, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

As long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation", that is subject to excise tax.

Upon denial of its claims for refund representing the excise taxes it paid on the *alkylate* importations, the taxpayer filed a motion for partial reconsideration praying that the Court's previous decision be reconsidered with regard to the findings that the *alkylate* importations are subject to excise taxes. The Taxpayer claims that *alkylate* is not a product of distillation since it was not produced by distilling crude oil. The Taxpayer further claims that Section 148(e) does not tax articles or products "whose raw materials" are products of distillation since the provision taxes only naphtha, regular gasoline and other similar products of distillation. Thus, it would defy logic to extend Section 148(e) to products "whose raw materials are products of distillation" (or so-called "indirect" products of distillation). The Taxpayer further claims that *alkylate* is not similar in nature to naphtha and regular gasoline in use, purpose, or nature.

In denying the taxpayer's motion for partial reconsideration, the CTA ruled that an examination of Section 148(e) readily shows that the word "distillation" is only found in the phrase "other similar products of distillation". There is nothing therein that suggests that distillation should be the ordinary or direct process through which the product is formed in order to fall within the scope of the proviso. The CTA also rejects the Taxpayer's claim that *alkylate* is not a product of distillation, because, while *alkylate* is not directly produced through the process of distillation but by alkylation, still, it cannot be denied that its very existence was derived from the utilization of these two raw materials, namely, olefins and isobutane, which are both products of crude oil distillation. Thus, *alkylate* would not have come into existence without the presence of the said raw materials. (*Petron Corporation v. Commissioner of Internal Revenue CTA Case Nos. 9565, 9606, & 9645 dated January 12, 2021*)

RE Developers are entitled to VAT zero-rating on its purchases of local goods, properties and services needed for the development, construction and installation of its plant facilities.

This is a motion for reconsideration filed by the Taxpayer arguing that it is entitled to refund based on the provision of the Tax Code. The Taxpayer also argued that it was not yet registered as a Renewable Energy Developer during the period of its refund claim. As such, it should not be subject to the provisions of the Renewable Energy Act.

In denying the taxpayer's motion for reconsideration, the CTA En Banc ruled that the Renewable Energy Act provides that all renewable energy (RE) developers, such as the herein Taxpayer, are entitled to zero-rated VAT on their purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors. (*Hedcor, Inc v. Commissioner of Internal Revenue CTA EB No. 1913 dated January 12, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The CTA is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case involving the same taxpayer

The taxpayer claims that it has sufficient creditable withholding taxes to be carried over for the taxable year 2014. However, it only presented that BIR Forms pertaining to CY 2005 only. For the CWTs for the CYs 2006 and 2007, it was able to present sufficient evidence. The taxpayer insists that the Court should take a look and adopt the findings made in the similar cases of Court of Tax Appeals (CTA) Case No. 8629 (2011) and CTA Case No. 9024 (2013) which also involves the taxpayer's claims for refund of its excess CWT.

The CTA stated that evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew. Thus, in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence. *(Ayala Corporation v. Commission of Internal Revenue CTA Case No. 9556, January 11, 2021)*

Income from junket operations is classified as "other related services" and is subject to corporate income tax and not franchise tax.

The taxpayer, a contractee/licensee, claimed for refund or issuance of a tax credit certificate (TCC) relative to its alleged erroneously, wrongfully, or excessively paid corporate income tax on junket gaming revenues alleging PAGCOR's exemption from tax extends to it for all its gaming operations, essential services and/or technical services. As such, it is liable only for 5% franchise tax in lieu of all kinds of taxes, including corporate income tax. Conversely, the BIR refuted the taxpayer's claim and alleged that, any income that may be realized from related services such as income from junket operations, shall be subject to income tax, and not franchise tax.

The CTA has held that the income from junket operations is classified as "other related services" and is subject to corporate income tax and not franchise tax. Such treatment extends to the taxpayer as contractee/licensee pursuant to the Junket Agreement. It was also categorically held by the Supreme Court that payment of corporate income tax on "other related services" extends to contractees/licensees. *(Prime Investment Korea, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2129, January 8, 2021)*

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The BIR's appreciation of the taxpayer's allegations and supporting documents is discretionary.

The taxpayer claims the factual antecedents of the instant case are very much alike with those in the case of Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (G.R. No. 201398-99, October 3, 2018) (hereinafter referred to as the "Avon Case"), where the Supreme Court ruled that the taxpayer's right to due process was violated where the Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.

In ruling against the taxpayer, the CTA held that it was not deprived of its constitutionally protected right to due process. Here, the BIR gave the taxpayer the opportunity to be heard. In fact, the BIR instructed the taxpayer to submit supporting documents in support of its request for reinvestigation. The CIR's appreciation of the taxpayer's allegations and supporting documents is discretionary. The BIR explained in its FDDA the reasons for the denial of the taxpayer's arguments as well as the results of the reinvestigation. (*Level Up, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2069, January 6, 2021*)

The determination of tax deficiency is distinct and should not be intertwined to the taxpayer's entitlement to a refund.

The BIR implored the CTA to adjudge deficiency VAT liability on the disallowed portion of the taxpayer's refund claim for the same category of tax sought to be refunded, that is, unutilized excess input VAT attributable to zero-rated sales/receipts for the third and fourth quarters of taxable year 2005. The BIR argued that the determination of the taxpayer's output VAT liability is merely for the purpose of ascertaining the latter's entitlement of its unutilized input VAT claim for refund and not for imposing any deficiency tax.

In ruling for the taxpayer, the CTA held that the determination of tax deficiency is distinct and should not be intertwined to a taxpayer's entitlement to a refund. To automatically hold the taxpayer liable for the alleged tax deficiencies against the claim for refund pertaining to the same category of tax would be unjust as it would deprive the taxpayer the opportunity to dispute the same in the proper venue, and not afford the defenses available under the law. (*Commissioner of Internal Revenue v. Procter & Gamble Asia Pte. Ltd., CTA EB No. 1998, January 5, 2021*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The issuance of the FAN, without consideration and evaluation of the defenses contained in the Protest to the PAN, violated taxpayer's right to due process.

The taxpayer asserted that the FAN issued by the BIR did not include any comment whatsoever on the matters raised by the former in its Protest to the PAN or even a discussion of the latter's findings in a manner that the former may know the various issues involved and the reasons for the assessments. The same FAN merely reiterated the assessments contained in the PAN and that the BIR failed to meet the due process standards, rendering the FAN null and void.

In ruling in favor of the taxpayer, the CTA held that the issuance of the FAN, without consideration and evaluation of the defenses contained in the Protest to the PAN, violated the taxpayer's right to due process. (*Dizon Farms Produce, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9711, January 5, 2021*)

Chief of the RLTD I has no authority to issue an LOA or effect modifications to a validly issued LOA through the issuance of a MOA.

The taxpayer sought the cancellation of the tax assessments made by the BIR revenue officers (ROs) for want of valid authority in conducting the audit of taxpayer's internal revenue tax liabilities. Conversely, the BIR claimed that the Head of an investigating office is considered as duly authorized by the CIR to issue and sign MOA in case of changes in the composition of the revenue officers due to resignation, retirement or reassignment in lieu of issuing an LOA. In this case, the MOA was signed by the RLTD I Division Chief.

The CTA held that the power to authorize the examination of a taxpayer's books of accounts and to issue assessments is primarily lodged with CIR or his duly authorized representative. The rank of a Division Chief - specifically that of the RLTD I, is not among those mentioned as duly authorized representative of the CIR delegated with such power. Thus, the issuance of the subject tax assessment was a result of the tax audit investigation conducted by ROs that have no valid authority to conduct the same against the taxpayer. As such, BIR's deficiency tax assessment is likewise invalid, as the same was based on a void tax audit conducted without authority. (*EDS Manufacturing, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8913, January 5, 2021*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Equally important in claiming the tax credits is proof that the declaration of income earned or received is made in the same period with the claiming of the related tax credit.

The taxpayer claimed for refund of its excess and unutilized creditable withholding taxes (CWT) during the taxable year (TY) 2016. However, upon examination of the documents to substantiate the taxpayer's claim, there had been service income billed and recorded in the general ledger in TY 2015 which were collected only in TY 2016. Likewise, the related CWT certificates were issued by the payors to taxpayer in TY 2016.

CTA has held that it is not enough that the related income earned or received be declared as part of the gross income. Equally important in claiming the tax credits is proof that the declaration of income earned or received is made in the same period with the claiming of the related tax credit. (*Service Resources, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9978, January 4, 2021*)

BIR ISSUANCES HIGHLIGHTS

RMC No. 2-2021, January 6, 2021

This provides guidelines for enlisted/delisted large taxpayers effective January 1, 2021.

Pursuant to RMC 112-2020, which provided guidelines to be observed pertinent to postponement of the effectivity of the enlisting/delisting of large taxpayers, this Circular provides for the following to be observed effective January 1, 2021:

1. All transactions of the affected enlisted taxpayers, effectivity of which was postponed up to January 1, 2021, shall continue and remain to be handled by the Revenue District Officers (RDOs) where they are registered prior to July 1, 2020; and
2. Transactions of delisted taxpayers may likewise now be accommodated and handled by the RDO having jurisdiction over the said taxpayers.

RMC 4-2021, December 22, 2020

This provides for guidelines in the filing of tax returns including the required attachments and payments of internal revenue taxes.

Filing and Payment

eBIRForms: for those who are required or opt to use the eBIRForms platform, file the tax returns electronically and pay through any of the following:

- Authorized Agent Banks (AABs) within RDO jurisdiction;
- Revenue Collection Officers (RCOs); or
- Electronic payment.

Electronic Filing and Payment System (eFPS): for those who are required or opt to use eFPS, file the tax returns electronically and pay through the eFPS-AABs where they are enrolled.

For manual filing of returns, taxpayers shall use the computer-generated returns or photocopied returns in its original format, and pay through the following:

- AABs within RDO jurisdiction;
- RCO; or
- Through issuance of checks.

Submission of Attachments

Electronically filed and/or paid returns without any attachments required, need not submit printed copy of e-filed tax returns to LTS/RDOs.

On the other hand, taxpayers with required attachments shall submit the same through esubmission@bir.gov.ph.

**RMC 4-2021,
December 22, 2020**
This provides for guidelines in the filing of tax returns including the required attachments and payments of internal revenue taxes.

Moreover, for attachments to Annual/Quarterly ITR electronically filed, taxpayers may submit via Electronic Audited Financial Statements (eAFS) system the claimed tax credit certificates in lieu of attaching the physical copy thereof. The e-mail confirmation received from eAFS shall serve as a proof of submission of said attachments.

Filing of “No-Payment Returns”

As a rule, taxpayers who file no-payment returns shall be done through eBIRForms. However, it can be made manually by the following:

- Senior Citizens;
- Persons with disability;
- Employees deriving purely compensation income from two or more employers, concurrently or successively at any time during the taxable period, or from a single employer, although the income of which has been correctly subjected to withholding tax, but whose spouse is not entitled to substituted filing; and
- Employees qualified for substituted filing but opted to file for other purposes.

**RMC 5-2021,
December 28, 2020 –**
This provides simplified policies on the Application for Registration of Computerized Accounting System (CAS), Computerized Books of Accounts (CBA) and/or its components, including the Electronic Storage System (ESS), Middleware or other similar systems.

The registration of CAS, CBA, ESS, Middleware or other similar systems (collectively as “System”) shall no longer be required to secure Permit to Use (PTU), instead, shall be subject to the following policies:

- Registration of the System shall require the submission of documentary requirements stated on the Checklist of Documentary Requirements (CDR) (Annex A) to the RDO where the taxpayer is registered.
- The System shall comply with the standards under Annex B. Violation thereof by virtue of a post-evaluation audit shall subject the taxpayer to penalties.
- Acknowledgement Certificate (Annex C) shall be issued within three (3) working days from receipt of complete documents by the RDO where the taxpayer is registered.
- System demonstration shall no longer be required prior to the use of the System.
- All taxpayers with existing PTUs shall no longer be required to register, except when there is either non-compliance with existing revenue issuances during audit, or the existence of a major enhancement to the System.
- Taxpayer must submit a new application for registration in case of major system enhancement.
- In case of minor system enhancement, taxpayer must submit a written notice to the RDO specifying the minor enhancement made.

BIR ISSUANCES HIGHLIGHTS

***RMC 14-2021,
January 12, 2021 –
This clarifies the
effectivity date of
RMO No. 47-2020
which imposed a new
requirement for
processing of VAT
Refund Claims
pursuant to Section
112 of the NIRC, as
amended.***

The effectivity date of RMO No. 47-2021 is clarified to be January 19, 2021.

VAT Refund claims filed prior to January 19, 2021 shall be filed and processed following the guidelines and procedures set forth in RMC No. 47-2019 and RMO No. 25-2019.

On the other hand, VAT Refund claims filed on or after January 19, 2021 shall be filed and processed in accordance with the guidelines and procedures of RMO No. 47-2020.

***RMC 15-2021,
January 27, 2021 –
This announces the
relaunching of Central
Business Portal (CBP).***

The CBP is an online system which serves as a central system to receive applications and captures application data involving business-related transactions from different government agencies (SEC, BIR, SSS, Philhealth, Pag-ibig) and a platform that will promote the use of the electronic payment systems for the said agencies.

For initial implementation, (A) Corporations with two (2) to four (4) incorporators, (B) Regular corporations whose incorporators are juridical entities and/or the capital structure is not covered by the 25%-25% rule, and (C) One Person Corporations (OPC) may now register through CBP the following:

1. Registration of Corporations with SEC and issuance of the corresponding Company Registration Number (CRN);
2. Issuance of TIN of new corporations;
3. Identification of the national internal revenue taxes which the new corporation will be liable to;
4. Payment of Annual Registration Fee (ARF) and Loose Documentary Stamp Tax (DST) through the ePayment facilities or manually at the RDO.

For manual payment of ARF and loose DST, the taxpayer shall submit the following CBP generated documents, together with the Checklist of Documentary Requirements for Corporations (Annex A).

BIR ISSUANCES

HIGHLIGHTS

***RMC 15-2021,
January 27, 2021 –
This announces the
relaunching of Central
Business Portal (CBP).***

BIR Certificate of Registration (COR) is electronically generated and bears a QR code. It shall be printed by the taxpayer in A4 size and shall proceed to the respective RDO to either buy BIR Printed Receipts/Invoices (BPR/BRI) or apply for Authority to Print (ATP).

Corporations not registering through the CBP shall comply with the documentary requirements provided in Annex A2.1 of RMC No. 57-2020.

***RMC 16-2021,
January 8, 2021 – This
Circular provides for a
standard format or
template for the
required list to be
submitted pursuant to
RR No. 29-2020.***

RR No. 29-2020 provides that all employers shall submit a one-time list of recipients of income mentioned under Section 3 of RA 11494 on or before January 15, 2021. However, this Circular provides for a standard format or template which extends the deadline to January 31, 2021 to give employers ample time to comply.

***RMC 17-2021,
January 26, 2021 –
This Circular provides
for the extension of
the deadline for the
filing/submission of
the Annual
Information Return of
Income Taxes
Withheld on
Compensation and
Final Withholding
Taxes (BIR Form Nos.
1604-C and 1604-F)***

This Circular is issued to inform all concerned taxpayers that the deadline of filing of BIR Form Nos. 1604-C and 1604-F, including the submission of the 4th Quarter (QAP) and Annual Alphabetical List of Employees/Payees from Whom Taxes Were Withheld (alphalist) using the new version of the Alphalist Data Entry and Validation Module (Version 7.0) under RMC No. 7-2021 is extended from January 31, 2021 to February 28, 2021.

Resubmission of alphalist that were already submitted prior to the issuance of the said RMC using the old version of the module is no longer required.

SEC ISSUANCES

HIGHLIGHTS

***SEC Notice dated
January 4, 2021***

*This provides for the
schedule and
application procedure
of the SEC
Certification
Examinations for the
1st Quarter of 2021.*

For purposes of complying with public health standards to mitigate the spread of COVID-10, the Securities and Exchange Commission (“SEC”) has released guidelines for the application procedure and schedule of the SEC Certification Examination for the 1st quarter of 2021 at the Main Office.

The Examination shall be held from 10:00 am to 1:00pm at the SEC Examination Room 3/F Breezeway, Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City on the following dates:

- January 18, 20, 22, 25, 27, and 29
- February 1, 3, 5, 8, 10, 15, 17, 19, 22, 24, and 26
- March 1, 3, 5, 8, 10, 12, 15, 17, 19, 22, 24, 26, and 29

Application for the Examination shall be made via Email in the form provided by the SEC in PDF format. Payment of the Examination Fee shall be made through any of the following options:

1. SEC Main Office;
2. SEC Office Ortigas; or
3. Any LandBank Branch.

***SEC Notice dated
January 13, 2021***

*This provides a
reminder for the
submission of “Notice
to Retain Specific
Corporate Term”.*

For purposes of complying with SEC Memorandum Circular No. 22, series of 2020, existing corporations registered before February 23, 2019 should file electronically their Notice to Retain Specific Corporate Term together with the Director’s Certificate on or before February 23, 2021 should they wish to retain their specific corporate term.

The filing of said documents shall be done through Email to be sent to MC22_S2020@sec.gov.ph, and hard copies must also be filed through the Company Registration and Monitoring Department (CRMD) Receiving Unit.

Failure to comply by the deadline shall be deemed to have opted for a perpetual term.

SEC ISSUANCES HIGHLIGHTS

SEC Notice dated January 18, 2021

This provides a clarification as to the entities required to comply with SEC MC No. 28, Series of 2020 as well as an extension of the deadline of said MC.

The SEC clarified that Publicly-Listed Companies, Issuers of Registered Securities, Exchanges and Self-Regulatory Organizations, Broker Dealer in Securities, Investment Houses, Underwriter of Securities, Government Securities Eligible Dealers, Investment Company Advisers, Mutual Fund Distributors, Transfer Agents and other Markets and Securities Regulation Department regulated and supervised entities are enjoined to comply with SEC MC No. 28, Series of 2020.

Furthermore the deadline for submission has been extended to February 22, 2021.

SEC Memorandum Circular No. 1, Series of 2021

This provides for the Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership (“BO Transparency Guidelines”).

For the purpose of preventing the misuse of corporations for illicit activities and promoting transparency of beneficial ownership, the following guidelines are to be complied with.

1. The issue, sale, or offer for sale or distribution of bearer shares and bearer warrants shall be prohibited.
2. The alienation, sale or transfer of shares of stock, the date thereof, by whom and to whom made, shall be properly disclosed and recorded in the Stock and Transfer Book of the issuing corporation within 30 days from the date of such alienation, sale, or transfer. However, sale or transfers of shares of publicly listed companies through the facilities of the Philippine Stock Exchange are not covered by this requirement.
3. The requirement to disclose beneficial ownership information in the GIS remains applicable to all registered corporations as well as the disclosure of beneficial ownership of shares in accordance with the 2015 Implementing Rules and Regulations of the Securities Regulation Code.
4. Generally, no dividends shall be paid to any person or entity unless such person’s name appears in the records of the corporation as the owner of the shares of stock for which dividends are being paid.
5. As regards applicant corporations, within 30 days from the issuance of the company’s Certificate of Registration, the person/s on whose behalf the registration of the corporation was applied for shall be disclosed to the Commission. In the same manner, nominee incorporators or applicants for registration, nominee directors/trustees, and nominee shareholders of the applicant corporation shall disclose their respective principals or nominators to the Commission.

SEC ISSUANCES HIGHLIGHTS

SEC Memorandum Circular No. 1, Series of 2021

*This provides for the
Guidelines in
Preventing the Misuse
of Corporations for
Illicit Activities
through Measures
Designed to Promote
Transparency of
Beneficial Ownership
("BO Transparency
Guidelines").*

6. As regards registered corporations, within 30 days from the effectivity of this Circular or within 30 days from the time they became or assumed the role of or started acting as nominee directors/trustees or shareholders, the nominee shareholders, nominee directors/trustees shall disclose to the Commission and to the corporation their nominators and principals or persons on whose behalf they act as shareholders/directors/trustees.

The abovementioned submission shall be done online in the form and manner prescribed by the SEC.

Failure to comply with the required disclosures shall be ground for the imposition of the applicable penalties and sanctions.

BSP ISSUANCES HIGHLIGHTS

***BSP Circular Letter Nos. 2021-003, 2021-004 & 2021-005
January 8, 2021***
This calls for the publication/position of certain documents as of December 31, 2020.

This provides the call for the publication/position of Balance sheet, as of 31 December 2020:

BSP Issuance	Document to be published	Entity
<i>BSP Circular Letter Nos. 2021-003</i>	Balance sheet (BS) and Consolidated Balance Sheet (CBS)	All banks
<i>BSP Circular Letter Nos. 2021-004</i>	BS	All Trust Corporations
<i>BSP Circular Letter Nos. 2021-005</i>	Statement of Condition And/Or Consolidated Statement of Condition	All Non-Bank Financial Institutions with Quasi-Banking Functions and/or Trust Authority.

***BSP Circular Letter Nos. 2021-006
January 12, 2021***
This provides clarification on the guidelines on the establishment of new banks.

The Bangko Sentral has issued the Guidelines on the Establishment of Digital Banks as embodied under Circular No. 1105 dated 02 December 2020. Said regulatory issuance defines a digital bank to clearly distinguish it from the other types of banks. In this respect, new bank applications with business model that essentially meets the definition of a digital bank shall be treated and evaluated as digital banking license applications, regardless of the type of bank indicated in the application. Accordingly, the applicants should comply with the prudential requirements for the establishment of a digital bank. Moreover, the documentary requirements are provided in Appendix 33 of the Manual of Regulations for Banks, as amended i.e., Annex A of Circular No. 1105).

The licensing of a digital bank will generally follow the existing procedures and timelines as set in the Citizen's Charter.

BSP ISSUANCES HIGHLIGHTS

***BSP Circular Letter
No. 2021-007
January 13, 2021***

This directs the issuance of Sanctions Freeze Order (SFO) to take effect immediately against those subject of designation as terrorist organizations.

The AMLC issued Resolutions directing the issuance of Sanctions Freeze Order (SFO) to take effect immediately against those subject of designation as terrorist organizations, as follows:

- a. *AMLC Resolution No. TF-33, Series of 2020, dated 23 December 2020* – SFO against the Communist Party of the Philippines and the New People’s Army also known as Bagong Hukbong Bayan (CPP/NPA); and
- b. *AMLC Resolution No. TF-34, Series of 2020, dated 23 December 2020* - SFO against the (1) Islamic State in Iraq and Syria in South-East Asia; (2) Dawlatul Islamiyah Waliyatul Masrik; (3) Dawlatul Islamiyyah Waliyatul Mashriq; (4) IS East Asia Division; (5) Maute Group; (6) Islamic State East Asia; (7) Maute ISIS; (8) Grupong ISIS; (9) Grupo ISIS; (10) Khilafah Islamiyah; (11) Khilafah Islamiyah Mindanao; (12) Ansharul Khilafah; (13) Bangsamoro Islamic Freedom Fighters-Bungo; (14) Bangsamoro Islamic Freedom Fighters-Abubakar; (15) Jama’atu al-Muhajirin wal Ansar fil Filibin; (16) Daulah Islamiyah; and (17) other Daesh-affiliated groups in the Philippines.

The above resolutions require the freezing without delay of the following property or funds, including related accounts:

- a. property or funds that are owned or controlled by the subjects of designation, and is not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat;
- b. property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the designated persons, organizations, associations, or group of persons;
- c. property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the designated persons, organizations, associations, or group of persons; and
- d. property or funds of persons and entities acting on behalf or at the direction of the designated persons, organizations, associations, or group of persons.

All BSP-Supervised Financial Institutions (BSFIs) are directed to submit to the AMLC: (i) a written return pursuant to Rule 16.c of the IRR of the Terrorism Financing and Prevention Act of 2012 (TFPSA); and (ii) Suspicious Transaction Reports on all previous transactions of the designated persons, organizations, associations or groups of persons, within five (5) days from receipt of the SFO.

BSP ISSUANCES

HIGHLIGHTS

**BSP Memorandum
No. 2021-002**

January 4, 2021

This provides regulatory relief on the Non-Imposition of Sanctions for Breach in Single Borrower's Limit by Foreign Bank Branches Established Prior to Republic Act No. 10641.

Existing foreign bank branches established in the Philippines prior to Republic Act No. 10641 that breach the Single Borrower's Limit (SBL) shall not be subject to sanctions prescribed under Section 362 of the Manual of Regulations for Banks (MORB) until 31 December 2021: Provided, That the amount of the new loan, credit accommodation, or guarantee extended as well as the restructured, renewed, and refinanced existing credit exposures, beginning 01 January 2021 until 31 December 2021, shall not exceed the prescribed percentage limit using as reference point twice the level of capital as defined under Section 103 of the MORB (Capital requirements of foreign bank).

**BSP Memorandum
No. 2021-003**

January 8, 2021

This provides the guidelines on the Electronic Submission of the Report on Reclassification of Debt Securities (RRDS) Out of the Fair Value Category.

The following guidelines shall be observed for the electronic submission of the RRDS on or before 29 January 2021.

1. The prescribed Data Entry Template (DET) and the corresponding Control Prooflist (CP) of the RRDS can be downloaded from http://www.bsp.gov.ph/SES/reporting_templates.
2. The DET with its corresponding scanned CP in Portable Document Format (PDF) duly signed by the authorized officials¹ of the BSFI shall be electronically transmitted on or before 29 January 2021, to the prescribed e-mail address, DSA-RRDS@bsp.gov.ph, using the required format for the subject, as follows:

RRDS <space><Name of BSFI><space><DD MMMM YYYY (e.g. 30 September 2020)>

and using the following prescribed file names and file format:

File	File Name	File Format
Data Entry	Reclassification Report	xls
Control Prooflist	Reclassification Report- Control Prooflist	pdf

BSP ISSUANCES

HIGHLIGHTS

BSP Memorandum

No. 2021-003

January 8, 2021

This provides the guidelines on the Electronic Submission of the Report on Reclassification of Debt Securities (RRDS) Out of the Fair Value Category.

3. Only electronic submissions originating from officially registered email address/es of the BSFIs shall be recognized and accepted by the DSA. The acknowledgment receipt for the submitted RRDS report and its corresponding validation results, upon availability, will be sent to the same registered email address/es.
4. Hard copy submission shall not be accepted. Covered BSFIs that are unable to transmit via email may submit the DET and its accompanying scanned CP using any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

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

BSP Memorandum

No. 2021-004

January 11, 2021

This provides for the retention of existing procedures on deposits and withdrawals.

The amendments to the MORB pursuant to BSP Circular No. 1106, Series of 2020, on the (a) restructuring of service fees for banks' deposit and withdrawal transactions with the Bangko Sentral, (b) reinstatement of the service fees on new and fit banknote withdrawals, (c) provision of rebates, refunds, and incentives for unfit banknote deposits, and (d) imposition of a penalty for cancelled withdrawal transactions took effect on 13 January 2021.

The Guidelines and Procedures Governing Currency Deposits and Withdrawals of Banks for Credit to and Debit from their Demand Deposit Accounts with the Bangko Sentral (Appendix 84 of the MORB, Annex A) shall remain effective.

The following procedures shall also govern deposit and withdrawal transactions of authorized agent banks (AABs) with the Bangko Sentral:

- A. For transactions with the Cash Department (CD) of the Payments and Currency Management Operations Sub-Sector (PCMOSS)
 1. AABs shall issue a letter of authority in favor of the Bangko Sentral, through the PCMOSSs, to debit their respective Demand Deposit Accounts (DDAs) maintained with the Bangko Sentral, for the service fee on their transactions on the day of deposit/withdrawal.
 2. AABs shall prepare separate deposit slip/s for new/fit, mixed and unfit notes, which will serve as basis for the imposition of applicable service fees for new/fit and mixed notes.

BSP ISSUANCES

HIGHLIGHTS

**BSP Memorandum
No. 2021-004**

January 11, 2021

This provides for the retention of existing procedures on deposits and withdrawals.

B. For transactions with the BSP Regional Offices and Branches (ROBs) of the Regional Operations Sub-Sector (ROSS)

1. AABs shall issue a letter of authority in favor of the Bangko Sentral, through ROSS, to debit their respective DDA maintained with the Bangko Sentral for the service fee on their transactions on the day of deposit/withdrawal.
2. AABs shall continue to prepare separate deposit slip/s for fit and unfit notes, which will serve as the basis for the imposition of applicable service fees for fit notes.
3. The BSP ROBs shall accept deposit of bundled fit notes packed in sealed plastic containers in uniform quantity of twenty (20) bundles of one (1) or various denominations.

**BSP Memorandum
No. 2021-008**

January 19, 2021

This provides the Guidelines on the Electronic Submission of the Report on Crimes and Losses (RCL).

Submission Procedures:

1. Reportable incidents falling due for submission to the BSP after 31 January 2021 shall be transmitted electronically using the DET prescribed for the updated RCL. The prescribed DET and its supporting Control Prooflist (CP) for the Initial Report and Final Report, respectively, and the User Guide as relevant reference for accomplishing the DET can be downloaded from http://www.bsp.gov.ph/SES/reporting_templates, by entering the assigned BSFI code. The DET may also be requested directly from the BSP-Department of Supervisory Analytics (DSA) through sdcrcl@bsp.gov.ph. For MSBs and Pawnshops, the BSFI code is patterned after the first 7-digit number in the Certificate of Registration (COR) for MSBs and/or Certificate of Authority to Operate (AOR) for Pawnshops, for example:

Type of	COR/COA	BSFI Code
Money Service	60-00001-0-	6000001
Pawnshop	31-00001-0-	3100001

2. The DET for the RCL (DET-RCL) together with the corresponding scanned CP in Portable Document Format (PDF) signed by the authorized official of the reporting entity shall be electronically transmitted within the existing deadline prescribed for the Initial Report (not later than 10 calendar days from knowledge of crime/incident) and Final Report (not later than 20 calendar days from termination of investigation) to the following prescribed e-mail addresses:

BSP ISSUANCES HIGHLIGHTS

***BSP Memorandum
No. 2021-008
January 19, 2021
This provides the
Guidelines on the
Electronic Submission
of the Report on
Crimes and
Losses (RCL).***

Type of Institution	E-mail Address
Non-Stock Savings and Loan Association	dsanssla-rcl@bsp.gov.ph
Money Service Business	dsamsb-rcl@bsp.gov.ph
Pawnshop	dsapawnshop-rcl@bsp.gov.ph

3. Only electronic submissions originating from officially registered e-mail address/es of the NSSLAs, MSBs and Pawnshops shall be recognized and accepted by the DSA.

4. NSSLAs, MSBs, and PAWNHOPS shall apply the prescribed format for the Subject, as follows:

<report name>space<ENTITY NAME>space<control no.>space<report status>

5. The prescribed file names and file format shall be used, as follows:

<reference no. >_<report status>.<file extension/format >

RCL Reference No. is composed of two (2) fields: First (template provided field): Report Name and BSFI Code; Second (input field): Control No. - only numeric values shall be accepted, i.e., the month and year when the initial report is submitted (mmyyyy) and the four (4) digit assigned by the BSFI, which, shall be in a continuing series until the end of the year. (i.e., RCL-BSFI Code-mmyyyy-0001)

6. NSSLAs, MSBs, and Pawnshops that are unable to transmit via email due to any fortuitous event may submit the DET and its corresponding scanned CP using any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline to:

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

7. Only one (1) DET and its corresponding signed and scanned CP shall be submitted for each applicable reporting period within the prescribed deadline. Submissions containing more than one (1) DET and one (1) CP shall automatically be rejected by the system.

BSP ISSUANCES HIGHLIGHTS

BSP Memorandum

No. 2021-009

January 19, 2021

This provides the guidelines on the Electronic Submission of the Consolidated List of Stockholders and their Stockholdings (CLSS)

Submission Procedures:

1. The CLSS shall be submitted to the Bangko Sentral within the prescribed deadlines, as follows:

Industry	Prescribed Deadline
Universal/Commercial Banks and Thrift Banks	12th banking day after end of calendar year
Rural Banks	30th banking day after end of calendar year
All Banks	12th banking day after end of reference quarter, if with changes

2. Banks shall electronically submit to the DSA beginning cut-off 31 December 2020, the CLSS in Portable Document Format (PDF) duly signed by the Bank's authorized official and the corresponding Excel File of the prescribed Data Entry Template (DET) which can be downloaded from http://www.bsp.gov.ph/ses/reporting_templates.
3. For publicly listed Banks, a Certification under oath by the Corporate Secretary of its list of ultimate beneficial owners of bank shares held in the name of the Philippine Central Depository (PCD) Nominee Corporation shall be submitted in PDF in addition to the requirements in Item b, as required under Section 122 of the MORB.
4. The PDF of the CLSS-DET and its corresponding Excel File, and if applicable, the Certification on ultimate beneficial owners, shall be electronically transmitted to the prescribed email addresses as follows:

Industry	Designated Email-address
Universal/Commercial Banks	dsakb-clssdto@bsp.gov.ph
Thrift Banks	dsatb-clssdto@bsp.gov.ph
Rural Banks	dsarb-clssdto@bsp.gov.ph

using the required format for the subject:

CLSS<space><Name of Bank>,<space><Reference Period in dd month name cyy>

BSP ISSUANCES HIGHLIGHTS

***BSP Memorandum
No. 2021-009
January 19, 2021
This provides the
guidelines on the
Electronic Submission
of the Consolidated
List of Stockholders
and their
Stockholdings (CLSS)***

5. Banks shall use the following prescribed file names and file format:

File	File Name	File Format
Data Entry Template	CLSS	.xls
Data Entry Template	CLSS	.pdf
Certification	PCD	.pdf

6. Only electronic submissions originating from officially registered email address/es of the Bank pursuant to Memorandum No. 2017-028 shall be recognized and accepted by the DSA. The acknowledgment receipt for the submitted report will be sent to the same registered email address/es.
7. Hard copy submission shall no longer be accepted. Banks that are unable to transmit via email may submit the prescribed report in any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

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

8. For 31 December 2020 report, Banks shall submit the complete list of its Stockholders and their Stockholdings to the BSP-DSA following the above submission procedures. Subsequent updates whether there are changes or no changes in the said list shall begin with 31 March 2021 report.
9. Only one (1) DET in Excel File and its corresponding signed PDF and, if applicable, the Certification, shall be submitted for each applicable reporting period within the prescribed deadline. Submissions containing more than one (1) DET, one (1) PDF and one (1) certification, as applicable, shall automatically be rejected by the system.

BSP ISSUANCES HIGHLIGHTS

***BSP Memorandum
No. 2021-010
January 19, 2021
This provides the
Guidelines on the
Electronic Submission
of List of Members of
the Board of Directors,
Trustees, and Officers
(LDTO)***

Submission Procedures:

1. BSFIs shall electronically submit to the BSP-Department of Supervisory Analytics (DSA), LDTO in Portable Document Format (PDF) duly signed by the authorized officials of the BSFI and the corresponding Excel File of the prescribed Data Entry Template (DET) which can be downloaded from http://www.bsp.gov.ph/ses/reporting_templates.
2. The PDF of the LDTO-DET and its corresponding Excel File shall be electronically transmitted within 20 banking/business days from the annual election of the board of directors/trustees, as provided in the BSFI's by-laws, to the prescribed email addresses, as follows:

Type of Institution	E-mail Address
Universal and Commercial Bank (UKB)	dsakb-clssdto@bsp.gov.ph
Thrift Bank (TB)	dsatb-clssdto@bsp.gov.ph
Rural and Cooperative Bank (RCB)	dsarb-clssdto@bsp.gov.ph
Non-Bank Financial Institution	dsanbfi-clssdto@bsp.gov.ph

using the required format for the subject, as follows:

LDTO <Bank Name>, <Date of Board's Annual Election>

The following are the prescribed file names:

File	File Name	File Format
Date Entry Template	LDTO	.xls
Date Entry Template	LDTO	.pdf

3. For Money Service Businesses, Pawnshops, Virtual Currency Exchanges, and Electronic Money Issuers, the submission of the LTDO is only required upon registration and as requested by the supervising BSP department.
4. For BSFIs covered by Memorandum No. M-2017-028, only electronic submissions originating from their officially registered email address/es of the BSFIs shall be recognized and accepted by the DSA. The acknowledgment receipt for the submitted LDTO, will be sent to the same registered email address/es.

BSP ISSUANCES

HIGHLIGHTS

***BSP Memorandum
No. 2021-010***

January 19, 2021

***This provides the
Guidelines on the
Electronic Submission
of List of Members of
the Board of Directors,
Trustees, and Officers
(LDTO)***

5. Hard copy submission shall not be accepted. Covered BSFIs that are unable to transmit electronically may submit the prescribed report in any portable storage device (e.g. USB flashdrive) through messengerial or postal services within the prescribed deadline addressed to:

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

6. Only one (1) DET in Excel File and its corresponding signed PDF and, if applicable, the Certification, shall be submitted for each applicable reporting period within the prescribed deadline. Submissions containing more than one (1) DET, one (1) PDF and one (1) certification, as applicable, shall automatically be rejected by the system.

***BSP Circular No. 1108
January 26, 2021***

***This provides
Guidelines for Virtual
Asset Service
Providers (VASP)***

VASPs are defined by the Financial Action Task Force (FATF) as businesses that facilitate virtual asset (VA) activities on behalf of their clients, which involve the conduct of one or more of the following activities:

1. exchange between VAs and fiat currencies;
2. exchange between one or more forms of VAs;
3. transfer of VAs; and
4. safekeeping and/or administration of VAs or instruments enabling control over VAs.

These activities are subject to the BSP's licensing requirements, regulatory expectations for money service businesses (MSB), anti-money laundering, countering the financing of terrorism and proliferation financing obligations.

The guidelines expanded the activities subject to the licensing regime of the BSP. Initially, BSP's scope only covered those involved in facilitating the exchange of fiat and VA.

Other existing rules and regulations for MSBs, such as those on outsourcing, liquidity risk management, operational risk management, information technology risk management, and financial consumer protection, must also be complied with upon securing the authority to perform VASP activities from BSP.

IC ISSUANCES HIGHLIGHTS

***IC Circular Letter
CL-2021-02 dated
January 7, 2021***
*This provides the
revised guidelines on
the declaration and/or
distribution of
dividends for entities
regulated by the
Insurance
Commission.*

Entities regulated by the Insurance Commission shall meet their respective regulatory measures at all times which shall be duly attested to by the President and Treasurer of the company before declaration and/or distribution of dividends out of the unrestricted retained earnings. However, the declaration of dividends shall not require the prior approval or clearance from the Insurance Commission.

Within 30 days after such declaration or distribution, the regulated entity shall report the same to the Insurance Commission through the Investment Services Division. Such report shall be accompanied by documentary requirements as enumerated under the Circular Letter and subject to the evaluation of the Insurance Commission.

Declaration or distribution of dividends by a regulated entity in violation of the Circular Letter may be ordered to cease and desist from doing business until the amount of such dividend or portion thereof in excess of the amount allowed has been restored.

***IC Circular Letter
CL-2021-04 dated
January 20, 2021***
*This provides for
amendments to IC CL
No. 2014-41 or the
Standard Chart of
Accounts (“SCA”) for
Mutual Benefit
Associations
 (“MBAs”).*

The amendments introduced by this Circular Letter added the following accounts:

1. An account for deposits and investments maturing beyond 3 months to 1 year;
2. An account for investments in Mutual, Unit Investment Trust, Real Estate Investment Trust and Other funds;
3. Accounts related to the implementation of PFRS 16 – Leases;
4. An account for grants received by an MBA relative to certain projects/activities;
5. An account for miscellaneous expense; and
6. An account for taxes paid by an MBA on its earnings subject to final tax.

Some of the abovementioned account classifications are further classified or have sub-classifications the details and descriptions of which are discussed in Annex A of the Circular Letter.

IC ISSUANCES HIGHLIGHTS

IC Circular Letter CL-2021-06 dated January 26, 2021
This provides the Guidelines on the electronic submission of requests for investment approval, compliance with security deposit requirements and filing of reportorial requirements.

The Circular Letter applies to all regulated entities and other financial institutions with the following submissions:

1. Report on Investments Made and Sold or Disposed of
2. Report on Derivative Transactions
3. Statement of Capital, Reserves, and Surplus Investments
4. Report on Material Related Party Transactions
5. Statement of Rental Income
6. Report on Investments held under IMA
7. Request for Approval of Investments
8. Compliance with Security Deposit Requirements

It further provides that the abovementioned applications and reportorial submissions shall be submitted through the Online Submission Portal of the Investments Service Division (“ISD”) indicated below:

<https://onlinesubmission.insurance.gov.ph/isd/login>

General requirements and documentary requirements to be submitted together with the application and reportorial submissions stated above are either indicated in the Circular Letter of annexed thereto.

Lastly, submission shall be considered officially received once the ISD sends an email acknowledging receipt of the requirements. Report submissions which do not comply with the provisions of the Circular Letter shall not be accepted and considered non-compliant which would cause the imposition of the applicable penalties for late submission.

IC Legal Opinion No. 2021-01 dated January 19, 2021
This opinion explains when an “extended warranty” is considered as an insurance product.

An “extended warranty” constitutes an insurance product if it falls within the definition of an “insurance contract” under the Insurance Code, as amended, and if all the elements set out in *Philamcare Health Systems, Inc. v. Court of Appeals, G.R. No. 125678*, are present, namely, (i) The insured has an insurable interest; (ii) The insured is subject to a risk of loss by the happening of the designated peril; (iii) Such assumption of risk is part of a general scheme to distribute actual losses among a large group of persons bearing a similar risk; and (iv) In consideration of the insurer’s promise, the insured pays a premium.

If not all the elements of an insurance contract are present, as when the maker of the contract merely guarantees that the product will function as claimed and promises to provide repair or replacement as necessary, such “extended warranty” is governed by Republic Act No. 7394 or the Consumer Act of the Philippines, in relation to the Civil Code.

IC ISSUANCES HIGHLIGHTS

***IC Legal Opinion No.
2021-01 dated
January 19, 2021***

This opinion explains when an “extended warranty” is considered as an insurance product.

An “extended warranty governed by the provisions of the Consumer Act and the Civil Code on warranties is offered by the manufacturer or service provider, and is limited to repair or replacement in case of defect and/or normal wear and tear during the warranty period. On the other hand, an “extended warranty” which constitutes an insurance product is offered by a party other than the manufacturer or service provider, and offers coverage beyond the terms of the manufacturer/service provider’s warranty.

***IC Legal Opinion No.
2021-02 dated
January 21, 2021***

This opinion explains when the date or period of counting of penalties provided under Section 243 of the Insurance Code validly starts.

The double interest on the proceeds of the policy under Section 243 of the Insurance Code is imposed for the duration of the delay, counted from the lapse of 30 days, or on the 31st day, from the date of receipt of proof of loss and ascertainment of the loss or damage, if ascertainment is had or made. In the even where no ascertainment of the loss or damage is had or made within 60 days from the insurer’s receipt of the proof of loss, the double interest is imposed on the proceeds of the policy for the duration of the delay, counted from the lapse of 90 days, or on the 91st day, from the date of the insurer’s receipt of proof of loss.

However, if the insurer’s “failure or refusal to pay is based on the ground that the claim is fraudulent”, then the double interest provided in Section 243 of the Insurance Code will not apply.

IC ISSUANCES HIGHLIGHTS

IC Legal Opinion No. 2021-03 dated January 21, 2021

This opinion explains whether a duly-licensed insurance and Health Maintenance Organization (HMO) may sell their insurance/HMO products abroad.

The authority granted by the Insurance Commission to insurance companies and HMOs pertains exclusively to the authority to do business in the Philippines, subject to the applicable laws of the Philippines, as well as to the jurisdiction and supervision of the Insurance Commission.

Since the Certificate of Authority and product approval issued by the Insurance Commission pertains specifically to the conduct of business in the Philippines, anything issued beyond such grant of authority/approval does not have the force of law, without prejudice to any relief which may be available to the insured/member before the regular courts. This is regardless of any permission granted by the Commission with respect to electronic commerce and remote selling initiatives.

Furthermore, the sale of insurance and/or HMO products outside the Philippines shall be subject to the licensing and product approval requirements, as well as other pertinent laws, rules, and regulations in effect in the country where such insurance and/or HMO products are being sold.

DOF ISSUANCES

HIGHLIGHTS

DOF Opinion No. 011.2020 dated September 23, 2020
A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within 30 days from the date of receipt of such ruling, seek its review by the Secretary of Finance.

The BIR Ruling involved in this Opinion was received by the taxpayer on February 13, 2020. Instead of filing a request for review with the Department of Finance, a protest was filed with the BIR on February 27, 2020. Subsequently, on August 19, 2020 the request for review of the BIR Ruling was received by the Department of Finance.

Pursuant to DOF Department Order No. 007-02, DOF Department Order No. 023-01, and Revenue Administrative Order (RAO) No. 03-01, a taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within 30 days from the date of receipt of such ruling, seek its review by the Secretary of Finance.

Since the Request for Review of BIR Ruling was filed beyond the reglementary period, the Department of Finance could not acquire jurisdiction over the case. Hence, the Request for Review of the BIR Ruling was denied.

DOF Opinion No. 012.2020 dated October 21, 2020
The waiver of taxes and fees under the FRIA Act of 2010 refer to those that are imposed upon the issuance of the Commencement Order by the court, and until the approval of the Rehabilitation plan or dismissal of the petition, whichever is earlier.

The BIR ruling being reviewed denied the taxpayer's request that the taxes and fees due to the national government relative to its sale of real property in furtherance of the objectives of the Financial Rehabilitation and Insolvency Act (FRIA) of 2010. Said sale occurred after the commencement order had been issued.

In denying the taxpayer's request for ruling, the BIR stated that the waiver of taxes, tariffs and customs duties in the FRIA Act of 2010 refers to claims already due to the government at the time of the issuance of the Commencement Order. According to the BIR, since the claim for taxes due to the government involved accrued after the time of the issuance of the Commencement Order, said claim for taxes due are not considered waived.

The Secretary of Finance opined that the waiver of taxes and fees under the FRIA Act of 2010 refer to those that are imposed upon the issuance of the Commencement Order by the court, and until the approval of the Rehabilitation plan or dismissal of the petition, whichever is earlier. Hence, the taxes and fees sought to be imposed in this case are considered waived.

DOF ISSUANCES HIGHLIGHTS

DOF Opinion No. 013.2020 dated November 25, 2020 In determining the reasonableness/unreasonableness of the honorarium as to constitute an “inurement”, the amount as well as the relevant and surrounding circumstances that necessarily influence the appropriateness thereof should be considered.

The BIR ruling being reviewed denied the taxpayer’s request for income tax exemption under Section 30(E) of the National Internal Revenue Code (NIRC) of 1997, as amended. Particularly, the BIR took notice of the honorarium amounting to Php43,658.00 in 2014, Php58,300 in 2015, and Php56,333 in 2016 as reflected in the taxpayer’s AFS. According to the BIR, since said amounts violate the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person, the taxpayer cannot be qualified as a non-stock, non-profit corporation as to entitle it to the exemption.

The Secretary of Finance stated that in determining the reasonableness/unreasonableness of the honorarium involved, it is not sufficient to consider the amount thereof but also the relevant and surrounding circumstances that necessarily influence the appropriateness thereof. The characteristics, corporate purpose/s and actual operations of the entity serve as a guide in determining the nature of the organization.

Here, the payment of honorarium for guest speakers is a legitimate expense related to an activity that promotes the objective and benevolent purpose of the organization. Furthermore, the amount of honorarium reflected in the AFS in 2014, 2015, and 2016 are reasonable considering the numerous seminars the taxpayer conducts every year. Hence, said honorarium is not considered exorbitant or unreasonable to fall under the “inurement” prohibition and the request for income tax exemption should be granted.

Published Articles

Business Mirror

Tax Law for Business

INSIGHTS



THE EASE OF PAYING TAXES BILL

By

Rodel C. Unciano

Another tax reform that is set to change the landscape of our tax system is House Bill No. 7881 otherwise known as “The Ease of Paying Taxes Bill” recently approved by the House Committee on Ways and Means. The bill aims to improve tax compliance by simplifying compliance procedures and enhancing the portability of tax transactions. The bill likewise seeks to strengthen the taxpayer’s bill of rights and create a Taxpayer’s Advocate Office.

One salient feature of the bill is the establishment of a reasonable criteria for classifying taxpayers, taking into consideration the taxpayer’s capacity to comply with tax rules and regulations, the amount and type of tax paid, the gross sales and/or receipts of the taxpayer, inflation, volume of business, wage and employment levels, and similar economic factors. The Secretary of Finance shall provide a classification for large and medium taxpayers and introduce additional classifications of taxpayers as may be necessary to achieve better service and tax administration.

THE EASE OF PAYING TAXES BILL

By

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For every classification of taxpayers, the Bureau of Internal Revenue (BIR) shall provide for a special unit to specifically cater to the needs of taxpayers under such classification. This is in recognition of the varying ability of taxpayers to settle their tax obligations. Simplified tax returns and processes shall be implemented for taxpayers not classified as medium or large.

Under the current system, the BIR actually maintains a division called the Large Taxpayers Service, specifically catering taxpayers classified as large taxpayers as defined under the regulations, however, as it stands now, there is practically no significant difference as regards the manner of tax administration and enforcement being applied for large taxpayers and other taxpayers not classified as such. The Ease of Paying taxes Bill seeks to simplify processes for taxpayers not classified as medium or large.

As to the registration requirements, the bill seeks to ensure that registration facilities would be available to taxpayers who are not residing in the country. The bill likewise seeks to remove the imposition of the annual registration fee currently imposed under Section 236(B) of the Tax Code. Also, under the bill, all persons who are engaged in business or practice of a profession can print receipts without a need of securing an authority to print from the BIR.

As to the invoicing and accounting requirements for VAT-registered taxpayers, the bill seeks to unify the requirement for VAT documentation, requiring only a VAT invoice for every sale, barter or exchange of goods or properties, lease of goods or properties, and for every sale, barter or exchange of services. Under the bill, the requirement for issuance of VAT official receipt for lease of goods or properties, and for sale, barter or exchange of services shall no longer be required.

The bill likewise seeks to strengthen the taxpayer's bill of rights, in addition to the taxpayer's rights and remedies already provided under the current Tax Code. Taxpayer's rights that the bill intends to safeguard include the right to pay no more than the correct amount of tax, right to a fair and impartial appeal, right to timely and easy to understand information, right to quality tax education and service, right to privacy and confidentiality of information, and right to be protected and seek redress against malicious, excessive and wrongful assessments, among others.

THE EASE OF PAYING TAXES BILL

By

Rodel C. Unciano

To ensure that the rights of the taxpayers are protected, the bill seeks to establish a Taxpayer's Advocate Office which shall be under the supervision and control of the Department of Finance and independent from the BIR. This is consistent with the declared policy of providing a healthy environment for the taxpaying public.

Ease in paying taxes coupled with guaranteed taxpayer's rights against undue assessments will surely boost the BIR's tax collection effort. If taxpayer's find tax payments to be easy and simple, the BIR in the end will certainly find it easy as well to collect the much needed revenues.

For inquiries on the article, you may call or email

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