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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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HIGHLIGHTS for AUGUST 2021

HIGHLIGHTS

SUPREME COURT DECISIONS

- The CTA is not precluded from considering evidence that was not presented with the BIR and the taxpayer-claimant may offer new and additional evidence to the CTA to support its case. (*Commissioner of Internal Revenue v. Nanox Philippines, Inc.*, G.R. No. 230416, May 5, 2021)
- The taxpayer has fifteen (15) days from the date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can the BIR issue the FLD/FAN. (*Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021)
- What sets apart BIR Rulings from other issuances of the BIR is that it relates to a particular taxpayer's set of facts and circumstances and a consequent determination of taxability or tax exemption, when applicable. (*Commissioner of Internal Revenue v. Court of Tax Appeals and Pilipinas Shell Petroleum Corporation*, G.R. No. 210501, 211294 & 212490, March 5, 2021)

COURT OF TAX APPEALS DECISIONS

- A finding of under-declaration of purchase does not itself result in the imposition of income tax. In the same vein, no deficiency VAT assessment should arise from an undeclared purchase. (*Commissioner of Internal Revenue vs. First Global Byo Corporation*, CTA EB No. 2168 dated July 1, 2021)
- The term "willful" cannot be ascribed to a juridical person such as a corporation without an officer or natural person being charged at the same time. (*People vs. E & D Parts Supply, Inc., Cipriano Uy and Margaret Uy*, CTA EB Crim No. 075 dated July 5, 2021)
- The assessment must contain a definite amount of tax liability for which the taxpayer will be held accountable in paying and a due date. (*Berringer Marketing Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 8978, July 13, 2021)
- A claim for refund premised on a tax exemption under a statute should be construed against the claimant-taxpayer, whereas a claim for refund based on erroneous payment of tax should be construed against the government. (*Petron Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8544, July 19, 2021)
- The taxpayer must present sufficient and convincing evidence to prove that the imported tobacco and alcohol products were not locally available in a reasonable quantity, quality, or price, at the time of importation to be exempt from excise tax under PD 1590. (*Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9913, July 29, 2021)

HIGHLIGHTS for AUGUST 2021

HIGHLIGHTS

BIR ISSUANCES

- **RR No. 14-2021, July 28, 2021** - This suspends the implementation of certain provisions of RR No. 5-2021 relative to taxation of proprietary educational institutions.
- **RR No. 15-2021, July 28, 2021** - This defers the implementation of RR No. 9-2021.
- **RMC No. 83-2021, July 12, 2021** - This circularizes the Implementing Rules and Regulations of RA No. 11534 (CREATE Act).
- **RMC No. 88-2021, July 16, 2021** - This circularizes the Lists of Withholding Agents required to deduct and remit the 1% or 2% Creditable Withholding Tax for the purchase of goods and services under Revenue Regulations No. 31-2020.
- **RMC No. 89-2021, July 16, 2021** - This circularizes RA No. 11534 otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" or CREATE".

SEC ISSUANCES

- **SEC Memorandum Circular No. 8, July 08, 2021** – This clarifies transitory provisions on the implementation of PFRS 15.

BSP ISSUANCES

- **BSP Circular No. 1123, July 13, 2021** – This provides amendments to the guidelines on Report on Intraday Liquidity of Universal and Commercial Banks and their Subsidiary Banks/ Quasi-Banks.
- **BSP Circular Letter No. CL-2021-052, July 14, 2021** – This disseminates the AMLC Advisory on the Implementation of Freeze Orders to all BSFIs.
- **BSP Circular Letter No. CL-2021-056, July 15, 2021** – This disseminates the AMLC Regulatory Issuance No. 4-2021 AMLC Registration and Reporting Guidelines.
- **BSP Memorandum No. M-2021-039, July 2, 2021** – This provides guidelines on the electronic submission of the Consolidated Foreign Exchange Position Report.

IC ISSUANCES

- **IC Circular Letter No. CL-2021-043, July 11, 2021** – This provides extension of the regulatory relief on the admittance of premiums receivable due to the COVID-19 pandemic.
- **IC Circular Letter No. CL-2021-046, July 22, 2021** – This provides guidelines on the softcopy submission of IFS.
- **IC Circular Letter No. CL-2021-47, July 26, 2021** – This provides amendments to the submission of the Annual Corporate Governance Report.

SUPREME COURT

DECISION HIGHLIGHT

The CTA is not precluded from considering evidence that was not presented with the BIR and the taxpayer-claimant may offer new and additional evidence to the CTA to support its case.

The BIR argued that documents not submitted at the administrative level cannot be presented in support of the taxpayer's judicial claim before the CTA.

The Court held that the taxpayer did not violate the rule on exhaustion of administrative remedies when it immediately instituted a judicial action without the necessary documents submitted at the administrative level. Instead, the BIR did not request supporting documents from the taxpayer but rather, it simply did not act on the administrative claim.

Moreover, the Court explained that the proceedings before it is not governed strictly by the technical rules of evidence and that the cases filed before it are litigated *de novo*. Thus, party-litigants should prove every minute aspect of their cases. In sum, the CTA is not precluded from considering evidence that was not presented with the BIR, and the taxpayer-claimant may offer new and additional evidence to the CTA to support its case. Thus, all pieces of evidence submitted and formally offered by the taxpayer before the CTA, regardless of whether they were presented at the administrative level, can be considered and be given credence in determining the propriety of the tax refund. (*Commissioner of Internal Revenue v. Nanox Philippines, Inc.*, G.R. No. 230416, May 5, 2021)

The taxpayer has fifteen (15) days from the date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can the BIR issue the FLD/FAN.

On December 16, 2010, the BIR issued a PAN against the taxpayer, which is posted by registered mail the next day. The BIR then issued and mailed the FLD/FAN on January 10, 2011. Although posted on different dates, the PAN and FLD/FAN were both received by the Post Office of Dasmariñas, Cavite, on January 17, 2011, and served upon and received by the taxpayer on January 18, 2011.

The Court held that Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response. If the taxpayer fails to do so within the prescribed period, it will be considered in default, and only then shall the BIR or his duly authorized representative issue to the taxpayer an FLD/FAN demanding payment of the assessed deficiency tax, surcharges, and penalties.

In the instant case though, the BIR did not ascertain the taxpayer's date of receipt of the PAN before issuing the FLD/FAN, but merely invoked Sec. 3.1.7 of RR No. 12-99 on constructive service. Moreover, the reliance by the BIR on constructive service of notice is unavailing and not justified by the circumstances. The PAN was posted through registered mail so there are easily records available by which the BIR could have determined whether or not the taxpayer received the notice and the date of such receipt. Thus, the assessment was canceled as the BIR violated the taxpayer's right to due process. (*Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021)

SUPREME COURT

DECISION HIGHLIGHT

What sets apart BIR Rulings from other issuances of the BIR is that it relates to a particular taxpayer's set of facts and circumstances and a consequent determination of taxability or tax exemption, when applicable.

Between May 2010 to August 2011, the BIR issued twenty-one (21) ATRIG which all stated that alkylate imported by the taxpayer was not subject to excise tax considering that it is not among those articles enumerated Tax Code.

On June 4, 2012, the Commissioner of Customs requested an opinion to the BIR on whether it could collect excise taxes on the taxpayer's alkylate importation. The BIR then issued Document No. M-059-2012 stating that alkylate importations are subject to excise tax.

Aggrieved, the taxpayer filed a petition for review with the CTA assailing Document No. M-059-2012 as an invalid BIR Ruling. The CIR and BOC questioned the jurisdiction of the CTA since Document No. M-059-2012 was neither a ruling nor an adverse decision but a mere internal communication.

The Court ruled that What sets apart BIR Rulings from other issuances of the BIR is that it relates to a particular taxpayer's set of facts and circumstances and a consequent determination of taxability or tax exemption, when applicable.

In this regard, it is readily apparent that the tenor and wording of Document No. M-059-2012 qualify it as a BIR Ruling. Hence, although the query originated from the Collector and not the taxpayer, in this case, the clarificatory/interpretative tenor of Document No. M-059-2012 relative to the PSPC's excise tax liability remains. As such, Document No. M-059-2012 is effectively a BIR Ruling issued against PSPC. (*Commissioner of Internal Revenue v. Court of Tax Appeals and Pilipinas Shell Petroleum Corporation, G.R. No. 210501, 211294 & 212490, March 5, 2021*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

A finding of under-declaration of purchase does not itself result in the imposition of income tax. In the same vein, no deficiency VAT assessment should arise from an undeclared purchase.

This case involves the cancellation of assessments made against the taxpayer for taxable years 2009 to 2011. The CIR alleges that the extraordinary prescription should apply since fraud can be presumed from the taxpayer's failure to report receipts in an amount exceeding thirty percent (30%) of that declared per return.

The CTA *En Banc* held that there is no basis for the extraordinary prescription to apply. A finding of under-declaration of purchase does not in itself result in the imposition of income tax. In the same vein, no deficiency VAT assessment should arise from an undeclared purchase.

Thus, the Court *En Banc* finds that the assessments were not based on undeclared income received by the taxpayer. It is apparent that the CIR merely presumed that the alleged undeclared purchases were part of the taxpayer's cost which translated into profit or income. Moreover, since there is no basis for Withholding Taxes or VAT to be imposed, the Court *En Banc* likewise finds the allegation of fraud to be untenable. (*Commissioner of Internal Revenue vs. First Global Byo Corporation*, CTA EB No. 2168 dated July 1, 2021)

RR No. 1-2017 did not create an exception to the 120+30 day mandatory and jurisdictional period.

The taxpayer filed an administrative claim for a refund on March 13, 2014, before the BIR. After that, RMC No. 54-2014 was issued, which was succeeded by RR No. 1-2017. On November 8, 2018, the taxpayer received the Denial Letter of the BIR. It then filed the Petition for Review on December 10, 2018. The Court in Division held that the taxpayer should have filed its judicial claim within 30 days from the lapse of the 120-day period as prescribed by RMC No. 54-2014.

The Court *En Banc* finds that RR No. 01-2017 did not create an exception to the 120+30-day mandatory and jurisdictional period. Instead, it was issued to give effect to the doctrinal rule laid down in the aforecited case, *Pilipinas Total Gas, Inc.*, and to afford fair and adequate relief to taxpayers whose claims were 'deemed denied' as a result of the retroactive application of RMC No. 54-2014 by providing that claims of tax refund or credit filed before June 11, 2014, shall continue to be processed administratively (*Advanced Systems, Inc. vs. CIR, CTA EB No. 2246 dated July 1, 2021*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The term "willful" cannot be ascribed to a juridical person such as a corporation without an officer or natural person being charged at the same time.

The taxpayers were indicted for the violation of Section 255 of the Tax Code for allegedly failing to pay deficiency income tax despite receipt of PAN and FAN, issued after-tax investigation. The people argue that it need not present evidence to prove that Margaret was the Treasurer of the corporation at the time of the commission of the crime because of her admission in the Pre-Trial Briefs that she is the same person charged in the Information.

The Court *En Banc* has held that the crimes provided under Section 255 of the Tax Code penalizes the responsible officers of such corporation. The term "willful" cannot be ascribed to a juridical person such as a corporation without an officer or natural person being charged at the same time. The "voluntariness", "positive act or state of mind" that are inherent in the word "willful" can only be ascribed to a natural person, acting on behalf of a juridical person and not to a juridical person standing alone.

Here, a careful review of the documentary exhibits presented shows that it failed to establish Margaret as the corporation's responsible officer. Considering that the criminal liability of the accused Margaret was not established by the prosecution then it follows that the criminal liability of the corporation, E & D Parts Supply, Inc. is also extinguished. (*People vs. E & D Parts Supply, Inc., Cipriano Uy and Margaret Uy, CTA EB Crim No. 075 dated July 5, 2021*)

The five-year prescriptive period begins to run with the filing of the affidavit complaints before the DOJ for preliminary investigation.

On September 23, 2010, the BIR filed a complaint before the DOJ for the conduct of the preliminary investigation. The DOJ found probable cause to indict the taxpayers with four counts of violation of Section 255 of the Tax Code or failure to supply correct or accurate information on IT and VAT returns for 2006 to 2009 but dropped the charges for tax evasion. After trial, the Court in Division dismissed the case on the ground of prescription.

The Court ruled that even the BIR concedes that the five-year prescriptive period begins to run with the filing of the affidavit-complaints before the DOJ for preliminary investigation. To lend credence to the position that the *verba legis* rule shall be applied such that the filing of the complaint before the DOJ commences and simultaneously interrupts the prescriptive period will render nugatory the provision on prescription.

Surely, the lawmakers could not have intended the right of the government to prosecute against tax offenses to run perpetually. To even commence the running of the prescriptive period only upon the dismissal of the case for reasons not constituting double jeopardy is not only unjust, but it already defeats the very essence of a prescriptive period laid down in the Tax Code. (*People vs. Juanchito Bernardo, et. al., CTA EB Crim No. 079, July 7, 2021*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The assessment must contain a definite amount of tax liability for which the taxpayer will be held accountable in paying and a due date.

The taxpayer filed the instant Petition for Review on the inaction of BIR on its Protest to the FLD. The taxpayer argues that the assessment is void as it did not sufficiently inform it in writing of the laws and the facts on which the assessments were based.

The Court ruled that in order to be valid, an assessment must, at the very least, contain 1) a computation of the tax liability, 2) an explanation narrating BIR's factual and legal bases, and 3) a definite demand for payment. As for the third requirement, it is imperative that the assessment contains a definite amount of tax liability for which the taxpayer will be held accountable in paying and a due date.

In this case, a perusal of the FLD/FAN issued to the taxpayer proves that the same does not constitute a definite demand for payment for lack of due date. Considering that there are no due dates in the FLD/FANs, it follows that the said assessments do not constitute a valid demand for payment as required under the Tax Code, Tax Regulations, and jurisprudence. As such, the taxpayer's obligation to pay the subject deficiency taxes did not legally accrue. (*Berringer Marketing Inc., vs. Commissioner of Internal Revenue, CTA Case No.8978, July 13, 2021*)

The taxpayer is not entitled to the refund of unutilized excess CWTs given the assessments made by BIR against it for the same taxable year.

The taxpayer filed an administrative claim for a refund representing its unutilized excess CWT for the taxable year 2016. The BIR then issued an LOA for the examination of taxpayer's books for the same taxable year which resulted in the issuance of an assessment for deficiency taxes.

The Court ruled that the issue of the taxpayer's claim for tax refund is intertwined with the issue of the proper taxes that are due from it. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund becomes questionable. In that case, the court must determine if a taxpayer claiming a refund of erroneously paid taxes is more properly liable for taxes other than that paid.

Thus, although the taxpayer has duly proven to have complied with all the requisites for the refund of unutilized excess CWT, the taxpayer is still not entitled to the refund given the assessments made by the BIR against it for the same taxable year. (*Arrow Freight Corporation vs. CIR, CTA Case No. 10064, July 13, 2021*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

A claim for refund premised on a tax exemption under a statute should be construed against the claimant-taxpayer, whereas a claim for refund based on erroneous payment of tax should be construed against the government.

The Court held that there must be a clear delineation between a claim for refund premised on a tax exemption under a statute and a claim for refund based on erroneous payment when the taxpayer or article, as the case may be, is not subject to tax. The former should be construed against the claimant-taxpayer, whereas the latter should be construed against the government.

Here, what is controlling is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously.

Applying the strict interpretation doctrine to the instant case vis-a-vis the Court's finding that alkylate is not a product of distillation, but of alkylation, the logical conclusion is that alkylate is not subject to excise tax. Since the Congress did not clearly, expressly, and unambiguously impose an excise tax on alkylate (or those which are not directly produced by distillation) under Section 148(e) of the NIRC of 1997, as amended, the taxpayer is correct that its claim for refund should have been resolved in its favor. (*Petron Corporation v. Commissioner of Internal Revenue, CTA Case No. 8544, July 19, 2021*)

The nomenclature of a document will not determine whether such is a valid LOA. An effective LOA should authorize a revenue officer to examine a taxpayer's books of accounts and other accounting records and such must be issued either by the CIR or by his duly authorized representative.

The taxpayer argued, among others, that the revenue officer who conducted the reinvestigation requested in the Protest to the FLD/FAN did not have the proper authority to do so.

The Court held that the nomenclature of a document will certainly not determine whether such is a valid LOA. To be effective, an LOA should authorize a revenue officer to examine a taxpayer's books of accounts and other accounting records to collect the correct amount of taxes. Equally important is the requirement that it must be issued either by the CIR himself or by his duly authorized representative, who under Section 13 of the NIRC, is the Revenue Regional Director. Subsequently, under Section D (4) of RMO 43-90, the CIR expanded his list of duly authorized representatives who may issue LOAs that will authorize the examination of taxpayers for deficiency taxes to include the following: (1) Regional Directors; (2) Deputy Commissioners; (3) Commissioner; and (4) Other officials that may be authorized by the CIR for the exigencies of service.

Accordingly, a Memorandum of Assignment or a Referral Memorandum, Tax Verification Notice, or any other letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA, provided that it was issued by any of the persons listed above. (*Rieckermann Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9613, July 22, 2021*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

A request for reinvestigation alone will not suspend the statute of limitations. Two things must concur: there must be a request for reinvestigation and the CIR must have granted it.

The taxpayer must present sufficient and convincing evidence to prove that the imported tobacco and alcohol products were not locally available in a reasonable quantity, quality, or price, at the time of importation to be exempt from excise tax under PD 1590.

The taxpayer contended that the BIR has no right to collect upon the assessments as the same is null and void on the ground of prescription. It likewise asserted that the prescriptive period was not interrupted since no actual reinvestigation was conducted by the BIR.

In granting the Petition, the Court ruled that the right of the BIR to collect the assessed deficiency taxes has prescribed. Further, the taxpayer's motion for reinvestigation did not interrupt or suspend the prescriptive period to collect citing Section 223 of the NIRC of 1997, as amended, which provides *inter alia*, that the running of the statute of limitations for the collection of deficiency taxes shall be suspended when the taxpayer requests for and is granted a reinvestigation by the BIR.

Hence, two (2) requisites must concur before the period to collect taxes may be suspended or interrupted: (1) there must be a request for reinvestigation; and (2) the CIR must have granted it. (*Citiparking Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 9451, July 23, 2021*)

The taxpayer argued that its importation of commissary and catering supplies is exempt from all taxes pursuant to its franchise considering that Republic Act (RA) No. 9334 did not repeal PD No. 1590.

Based on jurisprudence and pertinent provision of PD No.1590, the following conditions must be fulfilled by the taxpayer for it to be exempt from the excise tax on its importation of tobacco and alcohol products, to wit:

- (1) payment of the corporate income tax;
- (2) the said supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and
- (3) they are not locally available in a reasonable quantity, quality or price.

Here, the taxpayer failed to comply with the third condition. It failed to present sufficient and convincing evidence to prove that the imported tobacco and alcohol products were not locally available in a reasonable quantity, quality, or price, at the time of importation. Such being the case, the taxpayer has not fulfilled all conditions to be entitled to the tax exemption granted under Section 13 of PD No. 1590. (*Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9913, July 29, 2021*)

BIR ISSUANCES HIGHLIGHTS

RR No. 14-2021, July 28, 2021

This suspends the implementation of certain provisions of RR No. 5-2021 relative to the taxation of proprietary educational institutions.

This suspends the implementation of the following provisions of Revenue Regulations No. 5-2021 relative to the taxation of proprietary educational institutions:

- a. Section 2(C), on the definition of Proprietary Educational Institutions, insofar as it includes therein the phrase, "which are non-profit",
- b. Section 2(E), on the definition of Non-Profit, insofar as it applies to "Proprietary Educational Institutions", and
- c. Section 3(B), which provides an illustration of the tax treatment of Proprietary Educational Institutions that are non-profit.

RR No. 15-2021, July 28, 2021

This defers the implementation of RR No. 9-2021.

This defers the implementation of Revenue Regulations No. 9-2021 relative to the imposition of 12% Value-Added Tax on transactions covered by Section 106(A)(2)(a), Subparagraphs (3), (4) and (5), and Section 108 (B), Subparagraphs (1) and (5), both of the National Internal Revenue Code of 1997, as amended, until the issuance of amendatory revenue regulations.

RMO No. 21-2021, July 7, 2021

This Amends certain provisions of RMO No. 1-2011 on the implementation of final and executory Decisions in Administrative Cases involving BIR officials/employees.

This amends certain provisions of RMO No. 1-2011 on the implementation of Final and Executory Decisions in Administrative Cases involving BIR officials/employees.

Within three (3) days from receipt of the decisions/orders, the Personnel Adjudication Division (PAD) shall serve the same, including the order of preventive suspension, to the personnel/official concerned and simultaneously furnish the Head of Office where the personnel/official concerned is assigned. The PAD shall, within three (3) days after the decisions/orders become executory, furnish the Personnel Division and Security Management Division with copies thereof to ensure their full implementation.

The roles and responsibilities of the concerned BIR offices relative to the implementation of decisions/orders are prescribed in the Order.

BIR ISSUANCES HIGHLIGHTS

RMC No. 81-2021, July 6, 2021

Publishes the letter from the Food and Drug Administration containing the "List of VAT-Exempt Products" pursuant to RA No. 11534 (CREATE Act).

The VAT exemption for the sale or importation of the following shall take effect on:

- a. Medicines for diabetes, high cholesterol, and hypertension beginning January 1, 2020;
- b. Medicines for cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2021;
- c. Drugs and vaccines prescribed and directly used for COVID-19 treatment beginning January 1, 2021, until December 31, 2023; and
- d. Medical devices directly used for COVID-19 treatment beginning January 1, 2021, until December 31, 2023.

RMC No. 82-2021, July 7, 2021

This addresses the absence of confirmation/ acknowledgment e-mail after uploading of documents to eAFS System

This addresses the absence of confirmation/acknowledgment e-mail after uploading of documents to the electronic Audited Financial Statements (eAFS) System.

In lieu of the confirmation/acknowledgment e-mail, copies of screenshots from the eAFS clearly showing the details contained in the screenshot, as illustrated in the Circular, are considered sufficient proof of submission to the BIR by the concerned taxpayer of the documents described in the said screenshots.

RMC No. 83-2021, July 12, 2021

This circularizes the Implementing Rules and Regulations of RA No. 11534 (CREATE Act).

This circularizes the Implementing Rules and Regulations of Title XIII of Republic Act No. 8424 Otherwise Known as the "National Internal Revenue Code of 1997". As Amended by Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE Act).

BIR ISSUANCES HIGHLIGHTS

RMC No. 84-2021, July 15, 2021

This circularizes Executive Order No. 138 titled "Full Devolution of Certain Functions of the Executive Branch to Local Governments, Creation of a Committee on Devolution, and for Other Purposes.

This circularizes Executive Order (EO) No. 138 titled "Full Devolution of Certain Functions of the Executive Branch to Local Governments, Creation of a Committee on Devolution, and for Other Purposes".

The EO shall cover all Local Government Units (LGUs), departments, agencies, and instrumentalities of the Executive Branch whose functions are in line with the devolved functions of the LGUs under Section 17 of Republic Act (RA) No. 7160 (Local Government Code of 1991), and other pertinent laws.

RMC No. 85-2021, July 15, 2021

This publishes the full text of the IATF MC No. 2021-1 dated June 3, 2021, by the Secretary of DBM and Chairman of Administrative Order 25 Inter-Agency Task Force, entitled "Guidelines on the Grant of the Performance-Based Bonus for the Fiscal Year 2021 under EO No. 80, s. 2012 and EO No. 201, s. 2016".

This publishes the full text of Administrative Order 25 Inter-Agency Task Force Memorandum Circular No. 2021-1 titled "Guidelines on the Grant of the Performance-Based Bonus (PBB) for the Fiscal Year (FY) 2021 under Executive Order (EO) No. 80, S. 2012 and EO No. 201, S. 2016".

The FY 2021 PBB covers all departments, bureaus, offices, and other agencies of the National Government, including Constitutional Commissions, Other Executive Offices (OEOs), Congress, the Judiciary, Office of the Ombudsman, State Universities and Colleges (SUCs), Government-Owned or-Controlled Corporations (GOCCs), Local Water Districts (LWDs) and Local Government Units (LGUs).

BIR ISSUANCES HIGHLIGHTS

**RMC No. 86-2021,
July 15, 2021**
*This circularizes the
Memorandum of
Agreement on
Information Exchange
and Reconciliation
between the
Department of Energy,
Bureau of Customs,
and Bureau of Internal
Revenue.*

This circularizes the Memorandum of Agreement (MOA) on Information Exchange and Reconciliation between the Department of Energy (DOE), Bureau of Customs (BOC), and Bureau of Internal Revenue (BIR), collectively called "Parties".

The BIR shall provide the DOE and BOC with the following documents:

- a. Monthly reconciliation report on denatured imported bioethanol per oil company, in a format to be agreed by the Parties, on or before the end of succeeding month from the month of receipt of the DOE report;
- b. Monthly reconciliation report on the inventory of crude oil, finished petroleum products, and biofuel per oil company, in a format to be agreed by the Parties, on or before the end of the succeeding month from the month of receipt of DOE report;
- c. Monthly reconciliation report on issued withdrawal certificates per oil company, in a format to be agreed by the Parties, on or before the end of the succeeding month;
- d. Monthly reconciliation report on the list of BIR-registered/accredited downstream oil industry participants, such as but not limited to, refiners, importers, and terminal operators, on or before the end of the succeeding month; and
- e. Other relevant information that the DOE and BOC may require for the monitoring of denatured imported bioethanol and inventory of crude oil finished petroleum products and biofuel.

**RMC No. 87-2021,
July 15, 2021**
*This prescribes the
acceptance of the
Philippine
Identification Card as
an acceptable
supporting document
for proof of address
and valid proof of
identification for all
transactions or
frontline services with
the BIR.*

This prescribes the acceptance of the Philippine Identification (PhilID) Card as an acceptable supporting document for proof of address and valid proof of identification for all transactions or frontline services with the BIR.

All revenue employees/officials processing BIR frontline services requiring presentation of any valid government-issued ID shall accept/allow the PSA-issued PhilID Card as proof of identification of the taxpayer. Presentation of the PhilID alone is sufficient as a valid proof of identification; hence, there is no need to require additional/other government ID to establish the identity of the taxpayer.

BIR ISSUANCES HIGHLIGHTS

**RMC No. 88-2021,
July 16, 2021**

This circularizes the Lists of Withholding Agents required to deduct and remit the 1% or 2% Creditable Withholding Tax for the purchase of goods and services under Revenue Regulations No. 31-2020.

This circularizes the recently-published Lists of Withholding Agents for inclusion to and deletion from the existing List of Top Withholding Agents (TWAs) required to deduct and remit either the 1% or 2% Creditable Withholding Tax (CWT) from the income payments to their suppliers of goods and services, respectively. Said lists are posted on the BIR's Website (www.bir.gov.ph).

The obligation to deduct and remit to the BIR the 1% and 2% CWT shall continue, commence or cease, as the case may be, effective August 1, 2021. Any taxpayer not found in the published list of TWAs is deemed excluded and, therefore, not required to deduct and remit the 1% or 2% CWT pursuant to Revenue Regulations No. 31-2020.

**RMC No. 89-2021,
July 16, 2021**

This circularizes RA No. 11534 otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" or CREATE".

This circularizes Republic Act (RA) No. 11534 titled "An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 and 290 of the National Internal Revenue Code of 1997, as Amended, and Creating Therein New Title XIII, and for Other Purposes", otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" or "CREATE".

BIR ISSUANCES HIGHLIGHTS

**RMC No. 90-2021,
July 28, 2021**

This provides specific guidelines and procedures on the utilization of Tax Payment Certificate (TPC) issued under the Comprehensive Automotive Resurgence Strategy (CARS) Program.

This provides specific guidelines and procedures on the utilization of Tax Payment Certificate (TPC) issued under the Comprehensive Automotive Resurgence Strategy (CARS) Program.

TPC refers to a non-transferable certificate, which shall be used to defray the tax and duty obligations of the Eligible and Registered Participants (ERPs) to the National Government. The ERPs shall request from the Department of Trade and Industry-Board of Investments (DTI-BOI) for the issuance of TPC based on the statutory deadlines for payment of tax and/or duty.

The TPC shall only be applied against the Excise Tax, Income Tax, and Value-Added Tax (VAT) liabilities incurred in the course of the ERPs operations, and shall not include any type of Withholding Taxes of the ERPs. The amount of the TPC shall be indicated in the tax return as a deduction from the tax due of the ERPs. Specifically, indicate the phrase "TPC No. (control or serial number)" and its corresponding amount in the boxes provided for in the line item of the tax return which states the phrase "Other Tax Credits/Payments (specify)" located immediately after the line item stating "Tax Due". In case the amount of TPC exceeds the tax due, net of the creditable taxes, the excess shall not be considered or treated as a refundable amount.

**RDAO No. 3-2021,
July 7, 2021**

This delegates the authority to approve/sign various taxpayer's requests and matters declared as "No-Ruling Areas", among others.

This delegates to the Assistant Commissioner of Legal Service the authority to act, approve/sign the following requests/matters involving:

- a. Extension of time to file Estate Tax returns;
- b. Extension of time to pay Estate Tax due;
- c. Extension of time to submit photocopies of the TCT/CCT/Shares of Stock that bears the annotation of the substituted basis of the real properties/shares of stock transferred/received pursuant to Section 40 (C) (2) of the Tax Code of 1997, as amended, as duly certified by the Registry of Deeds/Corporate Secretary;
- d. Matters declared as "No-Ruling Areas" in Revenue Bulletin (RB) No. 1-2003, as amended by RB No. 2-2003; and
- e. Non-compliance with any of the requirements under Revenue Memorandum Order No. 9-2014.

SEC ISSUANCES

HIGHLIGHTS

SEC Memorandum Circular No. 08, July 08, 2021
This clarifies transitory provisions on the implementation of PFRS 15

The SEC issued the following Memorandum Circulars ("MCs") relative to pronouncement issued by the Philippine Interpretations Committee ("PIC") and International Financial Reporting Interpretations Committee ("IFRIC") on the implementation of Philippine Reporting Standards ("PFRS") 15, Revenue from Contracts with Customers:

Memorandum Circular	Rule/Guide	Date Issued
SEC MC No. 14, Series of 2018	Deferral of the application of the provisions of PIC Q&A No. 2018-12 with respect to the accounting for significant financing component, and the treatment of uninstalled materials and land in the calculation of the percentage of completion (POC) for a period of three (3) years.	October 29, 2018
SEC MC No. 3, Series of 2019	Deferral of PIC Q&A 2018-12(H) on Accounting for Common Usage Service Area (CUSA) Charges and PIC Q&A 2018-14 on Accounting for Cancellation of Real Estate Sales until December 31, 2020.	February 8, 2019
SEC MC No. 4, Series of 2020	Deferral of the Implementation of IFRIC Agenda Decision on Over Time Transfer of Constructed Goods [Philippine Accounting Standards (PAS) 23-Borrowing Cost] for the Real Estate Industry until December 31, 2020.	February 21, 2020
SEC MC No. 34, Series of 2020	Deferral of PIC Q&A 2018-12 and IFRIC Agenda Decision On Over Time Transfer of Constructed Goods (PAS 23- Borrowing Cost) for the Real Estate Industry for Another Period of Three (3) Years or Until 2023.	December 17, 2020

The SEC *En Banc* approved the amendment to the transitional provisions in the above MCs which would provide real estate companies the accounting policy option of applying either the full retrospective approach or modified retrospective approach when they apply the provisions of the PIC and IFRIC pronouncements. It likewise approved that the policy option be available to entities that cease availing of the above SEC financial reporting reliefs whether in full or in part.

BSP ISSUANCES

HIGHLIGHTS

**BSP Circular No. 1123,
July 13, 2021**

This provides amendments to the guidelines on Report on Intraday Liquidity of Universal and Commercial Banks and their Subsidiary Banks/ Quasi-Banks.

This amends the guidelines on the report on intraday liquidity of Universal and Commercial Banks (UBs/KBs) and their Subsidiary Banks/Quasi-Banks (QBs), as follows:

1. Footnote to Section 145/145-Q of the MORB/MORNBF on the transitory provision of the Report on Intraday Liquidity:

“The regular submission of the Report on Intraday Liquidity shall commence with the end-January 2022 month-end report with submission deadline as prescribed under Appendix UQ-3.”
2. Footnote to Part V of Appendix TIIQ-t+3 of the MORB/MORNBF:

“V. INTRADAY LIQUIDIW RISK MANAGEMENT
xxx
Stand-alone Thrift Banks (TBs) /QBs and all RBs/Coop Banks shall make the abovementioned information available any time upon request of the Bangko Sentral. xxx”
3. Guidelines on the Preparation of the Report on Intraday Liquidity:
 - a. Reporting Format – It shall be prepared for peso-denominated transactions and for transactions that are of significant currency. Covered banks/QBs shall prepare the Report on Intraday Liquidity on a solo basis.
 - b. Amounts Reported – It shall be in absolute amount and in the original currency used in the transaction. As an indicative threshold a currency is considered "significant" if the aggregate liabilities denominated in that currency amount to 5 percent or more of the bank's/QB's total liabilities.

**BSP Circular Letter No.
CL-2021-051,
July 5, 2021**

This provides approval of the Merger of First Imperial Business Bank, Inc. and Racso's Bank, Inc., with FIBB as the Surviving Bank.

The SEC approved on June 15, 2021 the Articles of Merger, Plan of Merger and Supplemental Plan of Merger executed by and between First Imperial Business Bank, Inc. (A Rural Bank) [“FIBB”], the surviving corporation, and Racso’s Bank, Inc. (A Rural Bank) [“RACSO”], the absorbed corporation, wherein the entire assets and liabilities of RACSO will be transferred to and absorbed by FIBB.

FIBB commenced its operations as a merged bank on 01 July 2021.

BSP ISSUANCES HIGHLIGHTS

BSP Circular Letter No.

CL-2021-052,

July 14, 2021

This disseminates the AMLC Advisory on the Implementation of Freeze Orders to all BSFIs

This Circular Letter disseminates to all BSP-Supervised Financial Institutions ("BSFIs") the Anti-Money Laundering Council ("AMLC") Advisory on the Implementation of Freeze Orders ("FOs")

All BSFIs are advised that:

1. The periods for filing Returns on FOs should be strictly observed;
2. The 20-day effectivity of FOs should be reckoned from the time the accounts are actually frozen, as indicated in the Return, which shall be submitted within 24 hours from the freezing of the related accounts;
3. The late implementation of an FO and the consequent late submission of returns, or failure to file returns within a reasonable period may constitute:
 - a. A money laundering offense under Section 4 (f) of the AMLA; or
 - b. If the subject accounts were ordered frozen under the Terrorism Financing Prevention and Suppression Act of 2012 (TFPSA) or RA No. 10168; or the Anti-Terrorism Act of 2020 or RA No. 11479, the same may be considered as dealing, directly or indirectly, in any way or by any means, with any property or funds of a designated person under Section 8 of TFPSA;
4. The late implementation of an FO and/or late submission of Returns on FOs are administrative offenses or violations under any or all of the provisions of Rule IV, Section 2 of the Rules of Procedure on Administrative Cases under R. A. No. 9160 or the AMLA, as amended, and its IRR, and Guidelines and Other Issuances of the AMLC.

BSP Circular Letter No.

CL-2021-053,

July 15, 2021

This requires the publication/posting of Balance Sheet and Consolidated Balance Sheet by All Banks.

Pursuant to Section 61 of RA No. 8791, a call is made for the publication/posting by bank of its Balance Sheet (Head Office, branches, and other offices) together with its Consolidated Balance Sheet (banks and its subsidiaries and affiliates), if applicable, as of June 30, 2021, in accordance with Section 175 of the Manual of Regulations for Banks ("MORB") and Memorandum No. M-2020-073 dated 25 September 2020.

BSP ISSUANCES

HIGHLIGHTS

BSP Circular Letter No.

CL-2021-054,

July 15, 2021

This requires the publication/posting of Balance Sheet and Consolidated Balance Sheet by All Trust Corporations

Pursuant to Section 61 of RA No. 8791, a call is made for the publication/posting by the bank of its Balance Sheet (Head Office, branches, and other offices) together with its Consolidated Balance Sheet (banks and its subsidiaries and affiliates), if applicable, as of June 30, 2021, in accordance with Section 134-T of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF) and Memorandum No. M-2017-027 dated 11 September 2017.

BSP Circular Letter No.

CL-2021-055,

July 15, 2021

This requires the publication/posting of Statement of Condition and/or Consolidated Statement of Condition

Pursuant to Section 61 of Republic Act No. 8791, a call is made for the publication by all Non-Bank Financial Institutions with Quasi-Banking Functions and/or Trust Authority of its Statement of Condition (Head Office, branches, and other offices) side-by-side with its Consolidated Statement of Condition (parent institution and its subsidiaries and affiliates), if applicable, as of 30 June 2021, in accordance with Section 172-Q of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF) for quasi-banks and Section 144-N of MORNBF for trust entities.

Such statements shall be published in a newspaper of general circulation in the city/province where the principal office is located, but if no newspaper is published in the same city/province, then in a newspaper published in Metro Manila or in the nearest city/province within 20 working days from the date of this Circular Letter.

Copies of which, as published, together with the publisher's certificate shall also be scanned and submitted in pdf format at fss-somd@bsp.gov.ph within 5 working days from the date of publication.

BSP ISSUANCES

HIGHLIGHTS

BSP Circular Letter No.

CL-2021-056,

July 15, 2021

*This disseminates the
AMLC Regulatory
Issuance No. 4-2021
AMLC Registration
and Reporting
Guidelines*

This disseminates to all BSFIs the 2021 AMLC Registration and Reporting Guidelines which was approved by the AMLC in its Resolution No. 142 dated June 22, 2021.

BSP Circular Letter No.

CL-2021-057,

July 15, 2021

*This informs all BSFI
about the conversion
of Enterprise Bank, Inc.
(A Thrift Bank) into a
rural bank.*

The SEC registered on November 23, 2020, the conversion of n of Enterprise Bank, Inc. (A Thrift Bank) into a rural bank to be known as Enterprise Bank, Inc. (A Rural Bank).

The corresponding Certificate of Authority to Operate as a rural bank was issued by the Bangko Sentral ng Pilipinas on February 3, 2021. The Bank started to operate as a rural bank on July 1, 2021

BSP ISSUANCES

HIGHLIGHTS

**BSP Circular Letter No.
CL-2021-058,**

July 22, 2021

*This informs all BSFIs
of the updated
statements of the
Financial Action Task
Force on high-risk
jurisdictions.*

This Circular Letter informs all BSFIs of the updated statements of the Financial Action Task Force ("FATF") on high-risk jurisdictions.

1. **High-Risk Jurisdictions subject to a Call for Action** – BSFIs should refer to the FATF statement on these jurisdictions adopted on 21 February 20204, which was previously disseminated by the BSP thru CL-2020-026 and CL-2021-02-Risk Jurisdictions subject to a Call for Action
2. **Jurisdictions under Increased Monitoring** - On June 25, 2021, the FATF has issued an updated list of jurisdictions under increased monitoring. These countries are actively working with the FATF and have committed to resolve within agreed timeframes the identified strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. The FATF does not call for the application of EDD measures to be applied to these jurisdictions but encourages its members and all jurisdictions to take into account the information presented in their risk analysis

**BSP Circular Letter No.
CL-2021-059,**

July 23, 2021

*This provides the
guidelines under AMLC
Resolution Nos. TF-41
and TF-42, Series of
2021.*

The AMLC Resolution Nos. TF-41 and TF-42 direct all covered persons, among others, to:

1. Freeze without delay the following property or funds, including related accounts:
 - a. property or funds that are owned or controlled by the subjects of designation, and are 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 subjects of designation;
 - c. property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subjects of designation; and
 - d. property or funds of persons and entities acting on behalf or at the direction of the subjects of designation; and
2. Submit to the AMLC:
 - a. a written return, pursuant to, and containing the details required under, Rule 16.c of the Implementing Rules and Regulations of RA No. 10168; and
 - b. suspicious transaction report on all previous transactions of the subjects of designations within 5 days from the effectiveness of the Sanctions Freeze Orders.

BSP ISSUANCES

HIGHLIGHTS

BSP Circular Letter No.

CL-2021-060,

July 27, 2021

This provides Monetary Board Directives to Lyka/Things I Like Company, Ltd. And Digital Spring Marketing and Advertising, Inc.

This informs all BSFOs of the Monetary Board's ("MB") directives under Resolution No. 961, dated 22 July 2021, for Lyka/Things I Like Company, Ltd. (TIL) to cease and desist from operating a payment system in the Philippines without registration and to take immediate action to register with BSP pursuant to Republic Act No. 11127 or the National Payment Systems Act (NPSA) and Circular No. 1049, series of 2019.

The MB also directed the Digital Spring Marketing and Advertising, Inc., (Digital Spring), as a participant of the Lyka/TIL payment system, to cease and desist from performing cash-in service, merchant accreditation, and settlement process, among others, on behalf of Lyka/TIL until the latter properly register as an Operator of Payment System (OPS) in accordance with the NPSA and other applicable implementing rules and regulations.

Further, the MB ordered the cancellation of Digital Spring's Provisional Certificate of Registration, without prejudice to other regulatory actions, orders, and directives that BSP may undertake pursuant to its powers under the NPSA.

BSP Circular Letter No.

CL-2021-061,

July 30, 2021

This circulates the guidelines for De-Listing and Unfreezing Procedures under AMLC Regulatory Issuance No. 5, Series of 2021.

This Circular Letter disseminates to all BSFIs the AMLC Regulatory Issuance No. 5, Series of 2021, on the Guidance for De-Listing and Unfreezing Procedures to assist covered persons, government entities, and the public on the implementation of the targeted financial sanctions (TFS), particularly on how to access funds subject of a TFS, procedures on de-listing from the sanctions list, and what to do when delisting occurs or when a TFS is lifted.

BSP ISSUANCE

HIGHLIGHTS

**BSP Memorandum No
No. M-2021-039,**

July 2, 2021

This provides guidelines on the electronic submission of the Consolidated Foreign Exchange Position Report.

This provides guidelines on the electronic submission of the Consolidated Foreign Exchange Position Report

UBs and KBs shall no longer submit the CFXPR prescribed under Memorandum No. 2020-089 dated 11 December 2020 to the BSP Department of Supervisory Analytics (DSA), starting reference date 01 August 2021.

**BSP Memorandum
No. M-2021-040,**

July 16, 2021

This provides a reminder to BSFIs to refrain from discriminatory practices toward PWDs.

This Memorandum reminds all BSFIs to adhere to laws and regulations against discriminatory practices toward Persons with Disability (PWDs), including but not limited to:

1. non-acceptance of government-issued PWD identification cards for the opening of accounts and other financial transactions;
2. turning away visually impaired persons from opening bank accounts; and
3. requiring the visually impaired customers to open only joint ("and/or") accounts.

Further, BSFIs are reminded to provide express lanes for PWDs similar to those express lanes reserved for senior citizens and pregnant women within their premises, apart from mobility ramps and Braille systems in bank premises and automated teller machines (ATMs).

BSP ISSUANCES

HIGHLIGHTS

BSP Memorandum

No. M-2021-041,

July 21, 2021

This provides Sampling Methodology in the verification of Unfit Low-Denominated Banknotes.

This memorandum provides that BSP Greater Manila Regional Office (GMRO) will continue implementing sampling methodology in manual banknote verification.

This sampling methodology, which is adopted only in the manual verification of unfit low-denominated banknotes (i.e., 100-,50-,20-Piso), aims to strike balance between operational/cost efficiency and sound internal controls and is among the BSP's policy measures that are aimed at enhancing currency management.

Discrepancies noted on the samples that are counted piece-by-piece are extrapolated/grossed up on the premise that non-sample banknotes exhibit the same statistical trend on discrepancies.

BSP Memorandum

No. M-2021-042,

July 30, 2021

This provides an extension of the temporary measures implemented in the BSP Rediscounting Facility.

The MB in its Resolution No. 976 dated July 29, 2021, approved the extension of the temporary measures in the BSPs rediscounting facility until December 31, 2021, subject to further extension as may be approved by the MB, as follows:

1. Reduction of the term spread on Peso rediscounting loans to zero, thereby equating the Peso rediscount rate to the BSP Overnight Lending Rate, regardless of maturity (i.e. 1 to 180 days);
2. Reduction of the term spread on rediscounting loans under Exporters' Dollar and Yen Rediscount Facility (EDYRF), thereby reducing the applicable United States Dollar (USD) and Japanese Yen (JPY) rediscount rates to the 90-day London Interbank Offered Rates, or in their absence, an applicable benchmark rate such as the Secured Overnight Financing Rate, plus 200 basis points, regardless of maturity (i.e. 1 to 360 days); and
3. Acceptance for rediscounting with the VSP under the EDYRF of the USD- and JPY-denominated credit instruments related to enterprises allowed to operate during the ECQ of Luzon, as provided in the DTI Memorandum Circular No. 20-08. Except for loans to banks and capital markets. *Provided, that*, these credits are booked under the regular banking unit of the rediscounting bank and are compliant with the requirements on Eligible papers and collaterals under Section 282 of Manual of Regulations for Banks; *Provided, further*, that the said USD- and JPY-denominated credits pertain only to those end-user borrowers operating during the ECQ.

IC ISSUANCES

HIGHLIGHTS

UPDATES

IC Circular Letter No. CL-2021-043,

July 11, 2021

This provides an extension of the regulatory relief on the admittance of premiums receivable due to the COVID-19 pandemic.

This Circular Letter provides for the following extensions of the regulatory relief on the admittance of premiums receivable due to the COVID-19 pandemic:

1. The basis for admitting premiums receivable accounts (direct agents, general agents, and insurance brokers) for all non-life insurance and professional reinsurance companies shall be adjusted from 90 days to 180 days from the date of issuance of the policies.
2. Undue installment premiums shall be considered admitted assets as long as the issuance of the policy is within 180 days from the cut-off date. However, in case of default in any installment due, all remaining unpaid installments shall be treated as non-admitted assets.
3. In case of any deficiency in the Net Worth, collections during the first quarter of the following year of the over 180-day Premiums Receivable shall be considered as after-date transactions.

This rule shall be applied to annual and quarterly financial reports for the year 2021 unless extended or changed as deemed necessary by the IC.

IC Circular Letter No. CL-2021-044,

July 12, 2021

This provides the schedule of discount rates for life and non-life insurance policy reserves as of June 30, 2021.

This provides the schedules of Peso and Dollar Spot and Forward rates as of June 30, 2021, which shall be used in discounting cash flows in the calculation of life and non-life insurance policy reserves as of June 30, 2021.

The Peso and Dollar spot and forward rates to be used for discounting cash flows with a duration of more than 20 years were determined using the 1-year moving average of the 20-year government yield rate.

IC ISSUANCES

HIGHLIGHTS

UPDATES

IC Circular Letter No.

CL-2021-45,

July 16, 2021

This provides an invitation to the first ASEAN Corporate Governance Roundtable Activity for all IC regulated entities.

The Good Governance Advocates and Practitioners of the Philippines and the Corporate Governance Standards Committee of the Institute of Corporate Directors hosted the First ASEAN Corporate Governance roundtable activity for all regulated entities of the Insurance Commission on July 28, 2021, from 1:00-5:00 PM via Zoom.

The objective of the said roundtable is to encourage and inspire all entities under the umbrella of the Insurance Commission to further develop their corporate governance practices to improve their respective ASEAN Corporate Governance scores, and in turn, the overall corporate governance performance of the country.

IC Circular Letter No.

CL-2021-046,

July 22, 2021

This provides guidelines on the softcopy submission of IFS.

This provides that starting June 30, 2021 and thereafter, the Interim Financial Statements (IFS) shall be prepared using SCA-based pro-forma templates, which must be submitted to the IC only in soft copies (Excel format) through email to hmoifs@insurance.gov.ph.

The deadlines and penalties of P5,000.00 basic fine and P500.00 for every calendar day of delayed submission shall be imposed pursuant to Sec. 2.2 and 2.3 of CL No. 2016-41.

Quarter Ending	Due Date
March 31	April 15
June 30	July 15
September 30	October 15
December 31	January 15

IC ISSUANCES

HIGHLIGHTS

**IC Circular Letter No.
CL-2021-47,
July 26, 2021**

This provides amendments to the submission of the Annual Corporate Governance Report.

This Circular Letter correct typographical errors in the numbering of sections of Circular Letter No. 2020-72 as well as provide an amendment to Section 5(C) (3) to conform with the government mandate to promote "Ease of Doing Business", as follows"

SECTION 1: CORRECTING ERRORS IN THE NUMBERING OF SECTIONS

The following Sections under Circular Letter No. 2020-72 shall be changed to the following:

From	To
Section 8 – SPECIAL PROVISION FOR NON-LIFE AND PROFESSIONAL REINSURANCE COMPANIES	Section 6
Section 9 – IMPOSABLE PENALTIES	Section 7
Section 10 – OVERSEEING UNIT	Section 8
Section 11 – EFFECTIVITY	Section 9

SECTION 2: AMENDMENT TO SECTION 5 (C) (3)

"3. The ACGR shall be certified under oath by: (1) chairman of the Board; (2) CEO or President; (3) All Independent Directors; (4) Corporate Governance compliance officer; and (5) Corporate Secretary;

Accordingly, if the Director/s or Officer/s is/are residing outside the Philippines, a certification under oath attested by the Corporate Secretary or Company President may be submitted in lieu of the compliance thereof."

**IC Circular Letter No.
CL-2021-48,
July 26, 2021**

This extends the deadline of submission of AML and CTF Questionnaire for the second compliance period under Circular Letter No. 202-08.

This provides that all IC Regulated Entities may still submit their answers to the AML and CTF Questionnaire for the second compliance period on or before July 31, 2021.

IC ISSUANCES

HIGHLIGHTS

UPDATES

IC Circular Letter No.

CL-2021-49,

July 30, 2021

This provides guidelines for De-Listing and Unfreezing Procedures under AMLC Regulatory Issuance No. 5, Series of 2021.

This Circular Letter disseminates to all BSFIs the AMLC Regulatory Issuance No. 5, Series of 2021, on the Guidance for De-Listing and Unfreezing Procedures to assist covered persons, government entities, and the public on the implementation of the targeted financial sanctions (TFS), particularly on how to access funds subject of a TFS, procedures on de-listing from the sanctions list, and what to do when delisting occurs or when a TFS is lifted.

The guidance covers, among others, the following:

1. Delisting procedures as outlined by the United Nations (UN) Security Council Committee;
2. Situations where the AMLC can issue unfreezing orders;
3. Modes of communicating designations and delisting in the relevant UN Sanctions Lists to covered persons, government entities, and the public;
4. Modes of communicating the issuance of an unfreezing order to covered persons, government entities, and the public;
5. AMLC's function to assist in the verification of whether a person or entity is a designated person or entity;
6. Procedures on lifting TFS, involving false positive identification;
7. Procedures on how an innocent third-party may apply for relief for frozen funds and other assets;
8. Procedures on how to apply for authorized expenses and permissible transactions with designees; and
9. Guidance to covered persons, government entities, and the public on what to do if they are holding funds and other assets of a designee if delisting from the UN Sanctions List is made and/or an unfreezing order is issued by the AMLC.

Published Articles

Business Mirror

Tax Law for Business

INSIGHTS



YOUTUBER NOT YOUTUBE

By

Irwin C. Nidea, Jr.

There are many popular apps that changed the landscape of media as we know it. These platforms are used by celebrities and ordinary citizens to deliver interesting and wide array of entertainment contents. The number of likes and engagements are measured by these social media sites and the creators also known as social media influencers are rewarded with substantial compensation.

The Bureau of Internal Revenue (BIR) is aware that these social media influencers are earning a lot as many of them naively flaunt their earnings in their own social media account. In RMC 97-2021, the tax man is now after bloggers and video bloggers who derive income from the following sources, among others: YouTube Partner Program, sponsored social and blog posts, display advertising, becoming a brand representative/ ambassador, affiliate marketing, co-creating product lines, promoting own products, photo and video sales, digital courses, subscriptions, and e-books, podcasts and webinars.

YOUTUBER NOT YOUTUBE

By

Irwin C. Nidea, Jr.

This is just fair since ordinary working Filipinos are required to register and pay tax. Social media influencers are also required to withhold creditable/expanded withholding tax, final taxes, or other withholding taxes and remit the same to the BIR as well as issue the necessary Certificates of Tax Withheld, and failure to comply would mean corresponding penalties and criminal liability.

It is not the first time that the BIR has targeted this new economy. Through the years, the BIR has issued circulars to address the different players of the digital economy.

In 2013, the BIR issued RMC No. 55-2013 subjecting to tax online business transactions such as online shopping or retailing, online intermediary service, online advertisement and online auction. These online entities, treated similarly with any other brick-and-mortar businesses, are required to be BIR-registered, obtain and issue invoices and receipts, and most importantly, be subject to the corresponding taxes such as income tax on its earnings, withholding taxes, and VAT or percentage tax, among others.

In 2015, the BIR, through RMC 70-2015, required transport network companies (TNCs) and their partners (i.e., owner or driver of vehicle) to likewise register with the BIR, secure and issue registered official receipts and be subject to income and business taxes.

The BIR also issued RMC 60-2020 reminding persons conducting business through any forms of electronic media to pay taxes and register their business with the BIR. It covers individuals and non-individuals who are partner sellers/merchants, payment gateways, delivery channels, internet service providers and other facilitators. The RMC did not specify whether it seeks to cover both residents and non-resident individuals or corporations. But as can be gleaned from the RMC's registration guidelines and requirements, (i.e., Birth Certificate and Department of Trade and Industry registration for Individuals, and SEC Certificate of Registration and Articles of Incorporation/Partnership for Non-individuals), the said documents would seem to apply to resident entities only.

The House of Representatives on the other hand introduced bills to amend the country's VAT law by clarifying that all goods, "including electronic in nature", and all kinds of services, "whether rendered electronically or otherwise", shall be subject to 12% VAT. The bills also added to the current VAT coverage the supply by any resident or non-resident person of digital advertising

YOUTUBER NOT YOUTUBE

By

Irwin C. Nidea, Jr.

services, subscription-based services and digital services (i.e., google, facebook, amazon, youtube, among others).

There is however no specific provision on the House bills amending the current provisions on income tax, except on withholding tax for individual members of network orchestrators. The requirement for the non-residents to establish a representative office or agent in the Philippines has been scrapped since the country has treaty obligations, specifically on the creation of a permanent establishment before Philippine income tax may attach. This is the hurdle why the latest House Bill is just imposing VAT and not income tax on digital transactions.

It appears that currently, the BIR can only capture Philippine residents that are engaged in the digital economy. Philippine online platforms, online sellers and social media influencers must rightfully be subjected to tax. But the real revenue can be derived by the government from the online platforms by which the online sellers and social media influencers conduct their business. Unfortunately, it seems that they are out of reach by our current laws mainly because they are registered in a foreign country.

I hope the discourse surrounding the issue of taxing the foreign online platforms will gain traction once again. The target should not only be Philippine residents. Our country must be given its fair share of the income that these foreign registered platforms derive from us.

For inquiries on the article, you may call or email

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