

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 October 2024

HIGHLIGHTS

COURT DECISIONS

- A taxpayer's judicial claim for a refund or tax credit can typically be withdrawn once the claim has been administratively resolved in its favor. (*Petron Corporation v. Commissioner of Internal Revenue*, CTA Case No. 11369, October 7, 2024)
- A new LOA is not needed to authorize a new RO during the review of the taxpayer's request for reconsideration or reinvestigation. (*Alberto Lim Tangso/A.L. Electrical Shop & Parts Supply v. Commissioner of Internal Revenue*, CTA Case No. 10367, October 4, 2024)
- The service of NIC is a mandatory part of due process requirement in the issuance of a deficiency tax assessment. (*Berong Nickel Corporation v. Commissioner of Internal Revenue*, CTA Case No. 10319, October 3, 2024)

BIR ISSUANCES

- RMC No. 113-2024, October 15, 2024 – This announces the availability of certain functions in the Online Registration and Update System (ORUS).
- RMC No. 115-2024, October 18, 2024 – This clarifies certain policies and procedures relative to the implementation of the risk-based approach in the verification and processing of VAT refund claims.
- RMC No. 116-2024, October 18, 2024 – This clarifies the provision of the "Ease of Paying Taxes Act" applicable to the power industry.
- RMC No. 119-2024, October 25, 2024 – This provides the extension of the deadlines for the filing of tax returns and payment of corresponding taxes due thereon, including submission of required documents for taxpayers within the jurisdiction of Revenue District Offices of the Bureau of Internal Revenue that were affected by Typhoon "Kristine."

IC ISSUANCES

- CL No. 2024-20, October 17, 2024 – HMOs are now mandated to adopt PFRS 17 on or before January 1, 2027.

SEC ISSUANCES

- SEC OGC Opinion No. 24-21, August 16, 2024 – A non-stock, non-profit organization may, as incident to its purpose(s), engage in business activities which are reasonably necessary to carry out the purpose(s) for which the corporation was organized.
- SEC OGC Opinion No. 24-22, October 9, 2024 – A representative office is allowed to deal directly with its parent company's clients inside and outside the Philippines.
- SEC OGC Opinion No. 24-24, October 9, 2024 – The 19-lender rule pertains to non-institutional lenders and does not apply to primary institutional lenders.

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The issuance of Final Notice Before Seizure constitutes the final decision of the CIR that is appealable before the Court of Tax Appeals.

The CIR assessed the taxpayer with alleged deficiency taxes and compromise penalties.

Later on, the taxpayer received a PCL stating that to avoid accumulation of interest and surcharges, it is requested that taxpayer pay the assessments within 10 days from receipt of the PCL. The taxpayer then filed a Letter with the BIR raising its objections to the PCL, including the fact that its FAN protest is still pending resolution.

Subsequently, taxpayer received an FNBS demanding the settlement of taxpayer's tax liabilities within 10 days from notice otherwise there will be service and execution of Warrants of Distraint and/or Levy and Garnishment. Hence, the taxpayer filed a Petition for Review before the CTA within thirty days from the receipt of the FNBS.

The CIR vehemently argues that the CTA has no jurisdiction over the case since the thirty (30)-day appeal period must be reckoned from the taxpayer's receipt of the PCL, instead of the FNBS.

The Court held that it has exclusive appellate jurisdiction to take cognizance of decisions involving disputed assessments and the concerned taxpayer or party adversely affected by a decision of the BIR may file an appeal with the Court within thirty (30) days after the receipt of such decision. In *Commissioner of Internal Revenue vs. Isabela Cultural Corporation (Isabela case)*, the Supreme Court held that the FNBS which indicates that the taxpayer was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy, constitutes the CIR's final decision. Applying the Isabela case, the FNBS issued in this case constitutes as the final decision of CIR on taxpayer's protest, which is appealable to the CTA. (*Commissioner of Internal Revenue v. Intervet Philippines, Inc. CTA EB No. 2693 [CTA Case No. 9909], October 7, 2024*)

**COURT OF TAX APPEALS
RESOLUTION HIGHLIGHTS**

A new LOA is not needed to authorize a new RO during the review of the taxpayer's request for reconsideration or reinvestigation

The BIR issued a FLD finding the taxpayer liable for deficiency taxes. Not agreeing with the assessment, the taxpayer filed a Protest in the form of Motion for Reconsideration. The Regional Director then remanded the case to the BIR Revenue District Office for reinvestigation. During the reinvestigation, the docket was assigned to a new RO and GS which were not named in the LOA. The BIR subsequently issued a Final Decision on Disputed Assessment denying the taxpayer's Protest. Not agreeing with the denial of its Protest, the taxpayer continued to appeal its case to the CIR and later on to the CTA.

The Court ruled that a new LOA is not needed to authorize RO to reinvestigate taxpayer's deficiency tax assessments. Upon issuance of an assessment, the LOA has already served its purpose. In the review of the taxpayer's request for reconsideration or reinvestigation, the new RO will just re-examine the books of accounts that were already considered and evaluated by the former RO, and the additional documents, if any, that were submitted for reinvestigation. This is because a re-examination is not a continuation of an audit investigation of taxpayer's books of accounts, but only a review of what was already audited. Conversely, the audit investigation process is already finished and the danger or abuse sought to be avoided in the assessment (by not issuing an LOA) is already absent. (*Alberto Lim Tangso/A.L. Electrical Shop & Parts Supply v. Commissioner of Internal Revenue, CTA Case No. 10367, October 4, 2024*)

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COURT OF TAX APPEALS RESOLUTION HIGHLIGHTS

The service of NIC is a mandatory part of due process requirement in the issuance of a deficiency tax assessment.

The BIR issued a LOA for the examination of the books of account and other accounting records of taxpayer. After a while, the taxpayer received a Preliminary Assessment Notice indicating the result of the BIR's audit. Not agreeing with the BIR's audit's result, the taxpayer filed its Reply to PAN which the BIR denied. The taxpayer continued to appeal its case through the filing of Protest and later on the filing of a Petition for Review with the CTA.

The Court ruled that one of the first requirements of Section 3 of RR No. 12-99, as amended by RR No. 07-18, the prevailing regulation on the due process requirement in the issuance of a deficiency tax assessment, is that the NIC be primary accorded to the taxpayer.

The use of the word "shall" in subsection 3.1.1. describes the mandatory nature of the service of a NIC. As with the other notices required under the regulation, the purpose of sending a NIC is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The Notice of Informal Conference is part of due process. It gives both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN. Failure of the Commissioner to issue the NIC as required by RR No. 12-99, as amended, deprives the taxpayer of its right to due process, and evidently, renders the assessment void. (*Berong Nickel Corporation v. Commissioner of Internal Revenue, CTA Case No. 10319, October 3, 2024*)

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COURT OF TAX APPEALS DECISION HIGHLIGHTS

Every stage of the business which qualifies as having a “view to profit” thus qualifies such activity as doing business.

This is an appeal on the assessment issued by the City of Davao against the taxpayer for deficiency local business taxes, fees, and charges.

The City of Davao contends that the taxpayer is liable for deficiency local business taxes, fees, and charges for taxable years 2014 to 2018, based on the Revenue Code of Davao City which, in its definition of “doing business” includes “solicitation of orders.” The taxpayer argues that prior to both the Bangko Sentral ng Pilipinas and the Securities and Exchange Commission’s approval and grant of certificate to operate in Davao City, it merely operated a lending desk in Davao City where it only accepted loan applications. The credit approval and processing of such loan applications were made at its principal office in Makati City, and no sales were made and recorded in Davao City prior to 2017.

The Court ruled that such acceptance of loan applications is part of the process of the financing business of taxpayer, whose end goal is of course to earn profits. Such acceptance of loan applications consequently qualifies as an activity that is engaged in “with view to profit.” While the taxpayer has been found to have been doing business in Davao City, the Court, nevertheless, finds that it should not be made to pay the assessed taxes against it, Davao City not being the situs of the taxes payable. Instead, the sale or transaction would be recorded in its principal place of business in Makati City where the loan applications are processed and approved. Therefore, the taxes due shall be paid too in Makati City. (*Toyota Financial Services Philippines Corporation v. City of Davao and Erwin P. Alparaque, in his capacity as the Acting City Treasurer of the City of Davao, CTA Case No. AC-280, October 15, 2024*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

Business permits are not considered as local taxes for purposes of applying “in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national” provision

The City Treasurer issued an assessment against the taxpayer for the payment of Regulatory Fees and Charges, including Mayor’s Permit Fee.

The taxpayer argues that it is exempt from paying Mayor’s Permit Fee by virtue of Section 9 of RA 9511, which provides that the taxpayer’s payment of franchise tax shall be in “in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national”; that the said “in lieu of taxes” clause applies to national and local taxes; and, that the Mayor’s Permit Fee is a tax imposed on its activities.

The Court cited the case of Bases Conversion and Development Authority and John Hay Management Corporation v. City Government of Baguio City, which held that business permits are not local taxes in exemption to statutes. Thus, the CTA has no jurisdiction of and is precluded from the payment of mayor’s permit fees, cancellation of the assessment for mayor’s permit fees, and refund of the paid mayor’s permit fees for taxable years 2020 and 2021. (*National Grid Corporation of the Philippines v. Municipality of Bayombong, Nueva Vizcaya, CTA EB No. 2795, October 10, 2024*)

BIR ISSUANCES

HIGHLIGHTS

RMO No. 42-2024, October 2, 2024

This provides that VAT refund claims with incomplete information are automatically considered as High-Risk or requiring full verification

NEW PROCEDURE:

Applications with **incomplete information**, such applications are automatically classified as high-risk and shall require 100% verification of the VAT refund claim.

RATIONALE:

To ensure the completeness of information supplied in the schedules of sales and purchases

RMC No. 112-2024, October 15, 2024

This clarifies the guidelines on proper sale and affixture of loose documentary stamps to taxable documents

- ☑ The presentation of the original copy of the duly signed taxable document before the taxpayer may be allowed to purchase loose documentary stamp shall not apply to Tax Clearance Certificate Application.
- ☑ Taxpayers applying for TCC shall be allowed to purchase a loose documentary stamp.

BIR ISSUANCES HIGHLIGHTS

UPDATES

RMC No. 113-2024, October 15, 2024
This announces the availability of certain functions in the ORUS

Availability of Functions in the BIR ORUS

Functions	Availability
Application for update of taxpayer classification thru the "Update Information"	Starting October 1, 2024
Resumption of business registration and other registration-related transactions	Starting October 10, 2024

Application for update of taxpayer classification in ORUS

Update Type	Mandatory Documentary Support	Action
Downgrade (except Small to Micro)	Income Tax Return or Income Statement showing gross sales for the last 2 years	Manual approval of the RDO within 7 working days from submission of application
Downgrade (Small to Micro)	None	Automatic approval
Upgrade	None	Automatic approval

Resumption of business registration and other registration-related transactional functionalities/features in ORUS

The following functionalities/features are now available in ORUS:

- Registration of business and issuance of Electronic Certificate of Registration (eCOR) and Authority to Print (ATP) with Electronic Payment (e-Payment) Loose Documentary Stamp Tax (DST)
- Registration of New Branch
- Application for Authority to Print (Subsequent)

BIR ISSUANCES HIGHLIGHTS

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**RMC No. 115-
2024,
October 18,
2024**

This clarifies certain policies and procedures relative to the implementation of the risk-based approach in the verification and processing of VAT refund claims

General Policies

The following are the clarifications on the risk-based approach verification and processing of VAT refund claims pursuant to Section 112(A) of the Tax Code, as amended by the EOPT Act.

- ☑ The Taxpayer shall submit all documentary requirements mandated by the BIR for purposes of VAT refund regardless of the identified risk level.
- ☑ The submission of complete documentary requirements shall be based on the Checklist of Mandatory Requirement (Annex A.1).
- ☑ Noncompliance with the completeness of mandatory requirements shall result in the non-acceptance of the VAT refund application.
- ☑ The 90-day period to process and decide shall start from the time of acceptance of the processing office of the claim/application for VAT refund with complete documentary requirements.

VAT Refund Procedures

The sequence in the processing of VAT refund claims shall be as follows:

1. Checklisting¹ based on the Checklist of Mandatory Requirements;
 - a. Check completeness and propriety in the accomplishment of the application form;
 - b. Check if the schedules comply with the prescribed format and that the required supporting documents are present (but without confirmation if the transactions are individually supported);
2. Cursory checking of completeness of supporting documents submitted for sales and purchases of goods and services after the application has been accepted;
3. Determination of the risk level of the claim;
4. Processing and verification² for medium and high-risk claims. Low-risk claims are automatically recommended for refund, net of transactions with no supporting documents.

The verification procedures to be observed based on the risk level of the claim:

¹ Checklisting refers to the initial state in the processing of the VAT refund claims and is limited only to ensuring the completeness of the submitted documentary requirements.

² Verification refers to the process that ensures correctness and accuracy of the documents involving thorough examination, evaluations, and a deeper level of analysis and investigation.

BIR ISSUANCES HIGHLIGHTS

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Risk Level	Verification Procedures
Low-risk claims	<ul style="list-style-type: none"> ☑ Limited only to the checklisting and completeness of documentary requirements. ☑ Verification procedures for sales of goods and services as well as purchases and input tax shall no longer be performed.
Medium-risk and High-risk claims	<ul style="list-style-type: none"> ☑ The verification procedures outlined in RMO No. 23-2023 shall still apply, except for sales and purchases transactions not included in the required percentage of documents to be verified for medium-risk claims.

Impact of Specific Findings on the Verification Procedures

Findings	Impact
"No Supporting Documents (NSD)"	<ul style="list-style-type: none"> ☑ Shall NOT be considered as incomplete submission but will result in the disallowance of the unsubstantiated portion regardless of the risk classification. ☑ If the NSD for sales and purchases exceed at least 1% of the total amount of sales (for sale transactions) or total amount of claim (for purchase transactions), the application shall be automatically classified as high-risk and shall require 100% verification.
Missing/Incomplete information in the schedules of sales and purchases submitted	<ul style="list-style-type: none"> ☑ Shall be automatically classified as high-risk and shall require 100% verification.
Cannot Be Located (CBL) taxpayers	<ul style="list-style-type: none"> ☑ Local Suppliers with Input VAT claimed that are not selected for verification but are identified as CBL taxpayers shall not be allowed and shall form part of the disallowance of the claim.
Run After Fake Transactions (RAFT Program) for medium-risk claims	<ul style="list-style-type: none"> ☑ Input VAT claimed that are not selected for verification but are included in the RAFT program shall not be allowed, leading to outright disallowance.

BIR ISSUANCES HIGHLIGHTS

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**RMC No. 116-
2024,
October 18,
2024**

This clarifies the provision of the “Ease of Paying Taxes Act” applicable to the power industry

Tax Treatment of Pass-Through Charges

Entity/ies Passing-On the Charge	Pass-Through Charges	Tax Treatment
Distribution Utility (DU) Companies and Electric Cooperatives (EC)	Sale and transmission of electricity and ancillary services (including VAT) of the Generation Companies (GC) and Transmission Companies (TC)	<ul style="list-style-type: none"> ☑ GCs and TCs shall issue an invoice to the DU and EC for the whole generation fees and transmission fees, respectively, including the VAT. ☑ All payments by DUs and ECs pertaining to generation, transmission, and other VATable charges shall be subject to VAT. ☑ DUs and ECs shall issue an invoice to customers which shall include the pass-through charges. ☑ DUs and ECs shall not claim input tax from the pass-through charges. The proper claimants are the customers of the DUs and ECs.
Retail Electricity Supplier (RES)	Transmission and distribution charges	<ul style="list-style-type: none"> ☑ GCs and TCs shall issue an invoice to the RES for the whole generation fees and transmission fees, respectively, including the VAT. ☑ All payments by RESs pertaining to generation, transmission and other VATable charges shall be subject to VAT. ☑ RESs shall not claim input tax from the pass-through charges.

BIR ISSUANCES HIGHLIGHTS

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VAT Declaration and Reporting by GCs and TCs

Considering the various types of customers/end-users (i.e. VATable, zero-rated, exempt), the following shall be observed:

- ☑ Once the GCs and TCs have issued the invoice, the DUs, ECs, and RESs shall provide a **certification of zero-rated/exempt transactions** on or before the 5th day of the month following the invoice period.
- ☑ GCs and TCs will issue adjustment documents (i.e. Debit/Credit Memo/Note, Journal Voucher, Negative Invoice) to adjust output tax liability charged on zero-rated/exempt transactions

Tax Treatment of Specific Charges

Charges	Tax Treatment
Mandated Government Charges ³	Not subject to Output Tax and Creditable Withholding Tax on VAT and Income
5% Creditable VAT withheld by government customers	Claimed as Creditable VAT as evidenced by BIR Form No. 2307 in the VAT Returns of the DUs and ECs who issued the invoice on the sale of electricity
2% Income Tax withheld by customers engaged in business	Claimed as creditable withholding tax as evidenced by BIR Form No. 2307 in the ITR of the DUs, ECs, and RESs who issued the invoice on the sale of electricity

Transitory Provisions

GCs and TCs shall not be liable to the remittance of all outstanding deferred VAT from the effectivity of RR No. 3-2024 on April 27, 2024. However, the following transitory provisions shall be observed:

- ☑ Submission by GCs and TCs, in hard and soft copies, of an **inventory of outstanding deferred VAT** prior to April 27, 2024, from DUs, ECs, and others. The submission shall be made to the concerned RDO/LT office on or before September 30, 2024.

³ Includes: (i) Energy Tax; (ii) Universal Charges; (iii) Benefits to Host Communities; (iv) Feed-in Tariff Allowance; (v) National and Local Franchise Taxes; (vi) Real Property Tax

BIR ISSUANCES

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- ☑ DUs and ECs shall remit the deferred VAT on behalf of the GCs and TCs using BIR Form No. 0605. The TIN of the GCs and TCs shall be clearly indicated and that the payment shall be specified as for “DEFERRED VAT – RMC No. _____”
- ☑ Submission by DUs and ECs, in hard and soft copies, of the **summary of the remittance of deferred VAT**. The submission shall be made to the concerned RDO/LT office on or before the 10th day from the date of remittance of BIR Form No. 0605.
- ☑ DUs and ECs shall provide the BIR Form No. 0605 and the proof of payment to the GCs and TCs within 3 days from the remittance to the BIR. This shall be the basis of the GCs and TCs for the issuance of the invoice (pursuant to the transitory provision of RR No. 7-2024) and to record the payment of the deferred VAT. The unremitted portion of the deferred VAT prior to April 27, 2024, if any, shall remain outstanding until fully collected or closed in a tax audit.

Notes:

1. RMC No. 116-2024 includes the following annexes:
 - ☑ Annex A – Certification of zero-rated/exempt transactions
 - ☑ Annex B – Inventory of outstanding deferred VAT
 - ☑ Annex C – Summary of the remittance of deferred VAT
2. Deadline of submission of the inventory of outstanding deferred VAT is September 30, 2024, despite RMC No. 116-2024 being published on October 18, 2024. This may be due to the fact that RMC itself was dated August 21, 2024, but published only on October 18, 2024.

BIR ISSUANCES HIGHLIGHTS

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RMC No. 119-2024, October 25, 2024

This provides the extension of the deadlines for the filing of tax returns and payment of corresponding taxes due thereon, including submission of required documents for taxpayers within the jurisdiction of Revenue District Offices of the Bureau of Internal Revenue that were affected by Typhoon "Kristine."

Extended Deadlines

The deadlines for submission/filing of the following, as well as the payment of the corresponding taxes shall be extended to October 31, 2024:

- ☑ BIR Form 2550Q (Quarterly VAT Return)-eFPS and Non-eFPS filers – For the quarter ending September 30, 2024
- ☑ BIR Form 2551Q (Quarterly Percentage Tax Return)-eFPS and Non-eFPS filers – For the quarter ending September 30, 2024
- ☑ Quarterly Summary List of Sales/Purchases/Importations by a VAT taxpayer-Non-eFPS filers – For the quarter ending September 30, 2024
- ☑ Sworn Statement of Manufacturer’s or Importer’s Volume of Sales of each Particular Brand of Alcohol, Tobacco, and Sweetened Beverage Products – For the quarter ending September 30, 2024

Affected Revenue District Offices (including affected Authorized Agent Banks)

Geographical Location	Revenue District Office
Region I Ilocos Norte Ilocos Sur La Union Pangasinan	RDO No. 1-Laoag, Ilocos Norte
	RDO No. 2-Vigan City, Ilocos Sur
	RDO No. 3-San Fernando, La Union
	RDO No. 4-Calasiao, Central Pangasinan
	RDO No. 5-Alaminos City, West Pangasinan
	RDO No. 6-Urdaneta City, East Pangasinan
Cordillera Administrative Region Abra Apayao Benguet Ifugao Kalinga Mt. Province	RDO No. 7-Bangued, Abra
	RDO No. 8, Baguio City
	RDO No. 9-La Trinidad, Benguet
	RDO No. 10-Bontoc, Mt. Province
	RDO No. 11-Tabuk City, Kalinga
	RDO No. 12-Lagawe, Ifugao

Region II Batanes Cagayan Isabela Nueva Vizcaya Quirino	RDO No. 13-Tuguegarao, Cagayan
	RDO No. 14-Bayombong, Nueva Vizcaya
	RDO No. 15-Naguilian, Isabela
	RDO No. 16-Cabarroguis, Quirino
Region III Aurora Bataan Bulacan Nueva Ecija Pampanga Tarlac Zambales	RDO No. 17A-Tarlac City, Tarlac
	RDO No. 17B-Paniqui, Tarlac
	RDO No. 18-Olongapo City, Zambales
	RDO No. 19-Subic Bay Freeport Zone
	RDO No. 20-Balanga City, Bataan
	RDO No. 21A-Angeles City, North Pampanga
	RDO No. 21B-City of San Fernando, South Pampanga
	RDO No. 21C-Clark Freeport and Special Economic Zone (CFEZ)
	RDO No. 22-Baler, Aurora
	RDO No. 23A-Talavera, North Nueva Ecija
	RDO No. 23B-Cabanatuan City, South Nueva Ecija
	RDO No. 25A-West Bulacan
RDO No. 25B-East Bulacan	

Region IV-A Cavite Laguna Batangas Rizal Quezon	RDO No. 46-Cainta-Taytay
	RDO No. 54A-Trece Martires City, East Cavite
	RDO No. 54B-Kawit, West Cavite
	RDO No. 55-San Pablo City, East Laguna
	RDO No. 56-Calamba City, Central Laguna
	RDO No. 57-Biñan City, West Laguna
	RDO No. 58-Batangas City, West Batangas
	RDO No. 59-Lipa City, East Batangas
	RDO No. 60-Lucena City, North Quezon
RDO No. 61-Gumaca, South Quezon	
Region IV-B Mindoro Occidental Mindoro Oriental Marinduque Romblon Palawan	RDO No. 35-Odiongan, Romblon
	RDO No. 36-Puerto Princesa, Palawan
	RDO No. 37-San Jose, Occidental Mindoro
	RDO No. 62-Boac, Marinduque
	RDO No. 63-Calapan City, Oriental Mindoro

<p>Region V Albay Camarines Norte Camarines Sur Catanduanes Masbate Sorsogon</p>	RDO No. 64-Talisay City, Camarines Norte
	RDO No. 65-Naga City, Camarines Sur
	RDO No. 66-Iriga City, Camarines Sur
	RDO No. 67-Legazpi City, Albay
	RDO No. 68-Sorsogon City, Sorsogon
	RDO No. 69-Virac, Catanduanes
	RDO No. 70-Masbate City, Masbate

<p>National Capital Region</p>	RDO No. 24-Valenzuela City
	RDO No. 26-Malabon City/ Navotas City
	RDO No. 27-Caloocan City
	RDO No. 28-Novaliches
	RDO No. 29-Tondo-San Nicolas
	RDO No. 30-Binondo
	RDO No. 31-Sta. Cruz
	RDO No. 32-Quiapo- Sampaloc-San Miguel-Sta. Mesa
	RDO No. 33-Ermita- Intramuros-Malate
	RDO No. 34-Paco- Pandacan-Sta. Ana-San Andres
RDO No. 38-North Quezon City	

National Capital Region

RDO No. 39-South Quezon City
RDO No. 40-Cubao
RDO No. 41-Mandaluyong City
RDO No. 42-San Juan City
RDO No. 43-Pasig City
RDO No. 44-Taguig City-Pateros
RDO No. 45-SMART (San Mateo-Marikina-Antipolo-Rodriguez-Teresa)
RDO No. 47-East Makati City
RDO No. 48-West Makati City
RDO No. 49-North Makati City
RDO No. 50-South Makati City
RDO No. 51-Pasay City
RDO No. 52-Parañaque City
RDO No. 53A-Las Piñas City
RDO No. 53B-Muntinlupa City
RDO No. 116-Regular LT Audit Division I
RDO No. 125-Regular LT Audit Division II
RDO No. 126-Regular LT Audit Division III
RDO No. 121-Excise LT Audit Division I
RDO No. 124-Excise LT Audit Division II

INSURANCE COMMISSION ISSUANCE HIGHLIGHTS

CL No. 2024-20. October 17, 2024 - HMOs are now mandated to adopt PFRS 17 on or before January 1, 2027.

The International Accounting Standards Board (IASB) issued International Financial Reporting Standards (IFRS) 17, which covers the recognition, measurement, presentation, and disclosure of insurance contracts.

Pursuant to this, the SEC adopted IFRS 17 as the Philippine Financial Reporting Standard 17 (PFRS 17). All Health Maintenance Organizations (HMOs) doing business in the Philippines are now mandated to adopt PFRS 17 on or before January 1, 2027.

In addition, HMOs shall submit the PFRS Preparedness Assessment Reports along with their Interim Financial Statements starting January 15 and thereafter on or before the 15th of the month following the end of each Quarter. (IC CL 2024-20)

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ISSUANCE HIGHLIGHTS

SEC OGC Opinion No. 24-21, August 16, 2024

A non-stock, non-profit organization may, as incident to its purpose(s), engage in business activities which are reasonably necessary to carry out the purpose(s) for which the corporation was organized.

The corporation inquired whether a non-stock, non-profit organization can establish a business process outsourcing service or contact/call center that will serve its affiliates in other countries without amending its Articles of Incorporation.

As a general rule, non-stock, non-profit corporations are not empowered to venture on profitable business activities. By way of exception, the corporation may, as incident to its purpose(s), engage in business activities which are reasonably necessary to carry out the purpose(s) for which the corporation was organized, provided that any profit that may be derived therefrom are not distributable to the members but are used for the furtherance of corporate purposes.

Thus, the answer is affirmative, on the condition that the following restrictions and parameters still obtain, to wit:

1. The rendering of contact or call center services is reasonable and not primarily profit-making and is limited to its affiliates; and
2. That any profit may be derived therefrom are not distributable to the members but are used for the furtherance of corporate purposes.

SEC OGC Opinion No. 24-22, dated September 10, 2024, posted October 9, 2024

A representative office is allowed to deal directly with its parent company's clients inside and outside the Philippines.

The corporation inquired whether a representative office in the Philippines is allowed to deal directly with its parent company's clients outside the Philippines.

The Implementing Rules and Regulations of Republic Act No. 7042 or the Foreign Investment Act, as amended, defines a representative or liaison office as one that deals directly with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office. It undertakes activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of products.

Thus, a representative office is allowed to deal directly with its parent company's clients inside and outside the Philippines, provided its activities relate to information dissemination, promotion, and quality control of its parent company's products and does not derive income in the Philippines and is fully subsidized by its head office.

ISSUANCE HIGHLIGHTS

**SEC OGC Opinion No. 24-23,
September 11, 2024**

The term limit of the Board of Directors of a Country Club, deemed a stock corporation, is only one (1) year under Section 22 of the RCC.

The corporation, a country club, inquired whether it can continue to elect its directors for three (3)-year terms in accordance with its By-laws until such time it secures the necessary corporate approvals for such amendment and the Commission approves the same.

It was clarified that golf, country, and sports clubs are classified as **stock** corporations. As such, they should comply with the provisions on stock corporations under the RCC.

Further, it was emphasized that By-laws may be necessary for the government of the corporation, but they are nevertheless subordinate to the Articles of Incorporation as well as to the RCC and related statutes.

Thus, for a stock corporation, a 3-year term for the Board of Directors is a void By-law provision as it contradicts or fails to comply with the 1-year term under Section 22 of the RCC. Accordingly, a stock corporation is obliged to follow the 1-year term for Board of Directors under the RCC even if the corporation ultimately fails to correct and amend an invalid By-Law provision, because the same is deemed written into the said By-laws.

**SEC OGC Opinion No. 24-24,
September 11, 2024**

The 19-lender rule pertains to non-institutional lenders and does not apply to primary institutional lenders.

The corporation inquired on the interpretation of Rule 9.1.2.4 [now Rule 9.1.2.5] of the IRR of the Republic Act No. 8799 or the SRC, also known as the nineteen (19)-lender rule, particularly on the following:

- Whether a financial institution without a banking or quasi-banking license can issue evidence of indebtedness to more than 19 primary institutional lenders without violating the 19-lender rule; and
- Whether the 19-lender rule and the registration requirement will apply to off-shore borrowings or issuance of evidence of indebtedness to an off-shore entity.

As to the first query, the answer is affirmative. The 19-lender rule pertains to non-institutional lenders and does not apply to primary institutional lenders because the latter is covered by Rule 10.4.1 of the SRC-IRR.

As to the second question, the place where the securities would be sold or offered for sale or distribution is material such that if the securities would be sold or offered for sale or distribution outside of the Philippines, then the registration requirement would not apply.

ISSUANCE HIGHLIGHTS

**SEC OGC Opinion No. 24-25,
September 19, 2024**

The creation of the position of “Assistant Secretary” in a representative office is permitted under the Revised Corporation Code.

The foreign corporation inquired on the following:

- Whether it may modify the organizational structure of its representative office by creating additional subordinate offices and appointing subordinate officers as permitted by its By-Laws;
- Whether the creation of the position of “Assistant Secretary” in its representative office is permitted under the RCC; and
- In the affirmative, whether there are nationality or residency requirements that should be imposed on the Assistant Secretary of the representative office.

As to the first query, the parent company has the authority to create and consequently appoint officers and/or personnel of its representative office, as may be permitted by its By-laws.

As to the second query, the RCC and jurisprudence state that a corporation may have other officers as may be provided for in the corporation’s By-laws. Further, in the case of a foreign corporation, there is no prohibition in the RCC barring the creation of officer positions for its representative office, in addition to that of a resident agent.

As to the third query, the answer is in the negative considering the absence of any nationality or residency requirements for subordinate officers in the corporation’s By-laws.

**SEC OGC Opinion No. 24-26,
September 25, 2024**

A financing company can extend a credit for any kind of transaction of the borrower, subject to the 30% limit.

The corporation inquired on the total amount of credit a financing company may extend to third parties for real estate transactions.

Section 9(d) of the Implementing Rules and Regulations of Republic Act No. 8556 or the Financing Act provides the rule on allowable total credit that a financing company may extend, *i.e.*, the total credit that a financing company may extend to any person, company, corporation, or firm shall not exceed thirty (30%) percent of its net worth.

Thus, applying the basic principle in statutory construction that where the law does not distinguish, neither should we, a financing company can extend a credit for any kind of transaction of the borrower, subject to the 30% limit aforementioned.

FIRB ISSUANCES HIGHLIGHTS

UPDATES

***FIRB Advisory No. 006-2024,
October 7, 2024***

This provides for the Interim guidelines on the submission of the employment and compensation data in the Annual Benefits Report (ABR)

RBEs with tax incentives must submit their ATIR and ABR to their respective IPAs within 30 days after the tax return filing deadline.

Reporting Period:

Employment and compensation data in the ABR should be reported on a calendar year basis. RBEs operating on a fiscal year basis can use the most recent available data, either:

- From the start to the end of their fiscal year (e.g., April 2023 to March 2024), or
- For the calendar year (January 2023 to December 2023).

Submission Mode:

The ABR submission must follow the guidelines in FIRB Memorandum Circular No. 001-2024, dated March 27, 2024.

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Published Articles

Business Mirror

Tax Law for Business

INSIGHTS



The Capital Markets Efficiency Promotion Act

By

Mabel L. Buted

Our tax laws are significantly evolving. Our government is trying and continuing to develop and improve our system in taxation as the tax system and tax administration play a key role in the attainment of the objectives of easing the doing of business in the country, attracting more foreign investments, increasing revenues, and reducing poverty. In this year alone, three crucial laws were enacted – RA No. 11976 (the Ease of Paying Taxes Act or EOPT), RA No. 12001 (the Real Property Valuation and Assessment Reform Act or RPVARA), and RA No. 12023 (the law on VAT on Digital Services).

The Comprehensive Tax Reform Package Program of the government started in 2018. The CTRP Program was created to make the tax system more equitable and efficient. It consisted of four packages, three of which had already been passed.

The first package (Package 1) is the Tax Reform for Acceleration and Inclusion Law (TRAIN or RA No. 10963) that took effect on January 1, 2018. TRAIN sought to provide tax relief to individual taxpayers who are earning less by reducing the personal income tax rates applicable on their income. Package 2 is the CREATE Law (Corporate Recovery and Tax Incentives for Enterprises or RA No. 11534). It was signed into law in early 2021, a time when the country was in the middle of recovery from the challenges brought by the COVID-19 pandemic. The law focused on the rationalization of income tax and fiscal incentives of corporate entities to make the Philippines a more competitive and attractive venue for foreign investments. Package 3 is, as mentioned, the RPVARA, which was recently enacted this year. The Act

The Capital Markets Efficiency Promotion Act

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harmonizes the country's system in the valuation of real properties. The last package (Package 4) is still pending enactment. This is the Passive Income and Financial Intermediary Taxation Act or PIFITA. PIFITA seeks to simplify taxation of capital income and financial services. The bill was approved by the House of Representatives on final reading in November 2022. To date, it is awaiting passage by the Senate.

Pending the enactment of PIFITA, an "alternative" bill was introduced through the Capital Markets Efficiency Promotion Act (CMEPA). CMEPA is a "smaller bill" that is easier to pass according to Senator Gatchalian (<https://www.bworldonline.com/economy/2024/10/07/626343/govt-revenue-seen-taking-hit-from-house-capital-reform-bill/>). Similar to PIFITA, CMEPA aims to improve the country's competitiveness in the capital markets.

One of the significant changes that we are expecting from CMEPA is the reduction of the stock transaction tax from 0.60% to 0.10% on sale of shares of stock listed and traded through the local stock exchange. Also, under CMEPA, cash and property dividends received by nonresident alien individuals, whether or not engaged in trade or business in the Philippines, from domestic corporations and regional operating headquarters of multinational companies will be subjected to the same tax rate of 10% applicable to dividends received by Filipino citizens and resident aliens. At present, dividends of nonresident aliens are subject to higher tax rates – nonresident aliens engaged in trade or business are subject to tax at 20% while those not engaged in trade or business are taxed at 25%.

Documentary stamp tax (DST) on property and fidelity insurance will be imposed in the same manner as DST is imposed on life insurance policies. Currently, life insurance policies are exempt or subject to one-time DST ranging from P20.00 to P200.00, depending on the amount of the insurance. On the other hand, insurance upon property and on fidelity bonds are subject to DST at P0.50 for each P4.00 of the premium charged. If CMEPA is passed into law, similar with life insurance, property insurance, and fidelity policies worth less than P100,000.00 would be exempted from DST while those worth than P1 million will enjoy maximum rate of P200.00.

Further, in CMEPA, winnings from Philippine Charity Sweepstakes Office (PCSO) and lotto above P10,000.00 will be taxed at lower 10% rate from the present 20%. PCSO and lotto winnings not exceeding P10,000.00 would continue to be exempt from income tax. DST on horse race tickets or PCSO lottery tickets will be reduced from 20% to 10%.

The Capital Markets Efficiency Promotion Act

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There are other pending tax legislations. One of them is the CREATE MORE bill which I discussed in my previous article. Others are the Taxpayer’s Bill of Rights and Obligations Act (SB No. 1806) and Single-Use Plastic Bags Tax Act (SB No. 1844).

With all these significant developments, it is critical for taxpayers to be informed so they can timely adjust and assess the implications to their businesses and obligations. Stay tuned for more updates.

For inquiries on the article, you may call or email

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Glossary of Common Terms, Abbreviations, and Acronyms

ABR	-	Annual Benefits Report
ATIR	-	Annual Tax Incentives Report
BIR	-	Bureau of Internal Revenue
CIR	-	Commissioner of Internal Revenue
CTA	-	Court of Tax Appeals
EOPT	-	Ease of Paying Taxes
IPAs	-	Investment Promotion Agencies
IRR	-	Implementing Rules and Regulations
FAN	-	Final Assessment Notice
FNBS	-	Final Notice Before Seizure
FLD	-	Formal Letter of Demand
GS	-	Group Supervisor
LOA	-	Letter of Authority
NIC	-	Notice of Informal Conference
ORUS	-	Online Registration and Update System
PCL	-	Preliminary Collection Letter
RA	-	Republic Act
RBES	-	Registered Business Enterprises
RCC	-	Revised Corporation Code
RMC	-	Revenue Memorandum Circular
RMO	-	Revenue Memorandum Order
RO	-	Revenue Officer
RR	-	Revenue Regulations
SEC	-	Securities and Exchange Commission
SRC	-	Securities Regulation Code
TCC	-	Tax Clearance Certificate
VAT	-	Value Added Tax