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This MAP Tax Bulletin for May 2021 was contributed by Salvador Llanillo & Bernardo, Attorneys-at-Law.

Revenue Regulations

Rev. Regs. No. 1-2021 dated April 8, 2021

Implementing the Tax Incentives and Fee Privileges for the Procurement, Importation, Donation, Storage, Transport, Deployment and Administration of the Corona Virus Disease 2019 (COVID-19) Vaccines Under Section 11 of Republic Act No. 11525, otherwise known as the "COVID-19 Vaccination Program Act of 2021"

Pursuant to Section 11 of Republic Act (RA) No. 11525, beginning January 1, 2021, the procurement, importation, donation, storage, transport, deployment, and administration of COVID-19 vaccines through the COVID-19 Vaccination Program by the Government or any of its political subdivisions and by private entities shall be **exempt** from customs duties, value-added tax, excise tax, donor's tax, and other fees: Provided, That the vaccines shall not be intended for resale or other commercial use and shall be distributed without consideration from persons to be vaccinated.

Persons covered by the exemption:

1. National Government, through the Department of Health (DOH) and the National Task Force Against COVID-19 (NTF);
2. Any of the political subdivisions of the State; and
3. Private entities, and international humanitarian organizations, such as the Philippine Red Cross (PRC).

Guidelines and Procedures:

1. No VAT shall be imposed on the procurement of COVID-19 vaccines by the entities covered here. Hence, VAT shall not be part of the contract price.
2. No VAT and excise tax shall be imposed on the importation of COVID-19 vaccines.
3. The importation of COVID-19 vaccines as allowed herein shall not be subject to the issuance of an Authority to Release Imported Goods (ATRIG) under Revenue Memorandum Order (RMO) No. 35-2002.

4. No VAT shall be imposed by the service providers on the services to be rendered to the entities covered hereof for the storage, transport, deployment and administration of the COVID-19 vaccines. Hence, VAT shall not be part of the contract price for the engagement/procurement of such services by these entities.
5. No donor's tax shall be imposed on the donation of the COVID-19 vaccines to the entities covered hereof, subject to the ordinary rules of deductibility as provided for in Section 34 (H) of the NIRC of 1997, as amended, and its existing rules and regulations, if applicable.
6. The tax incentives herein shall only be applicable if the vaccines are not intended for resale or other commercial use and shall be distributed without any consideration from persons to be vaccinated.

Requirements to qualify for the exemption of VAT, excise tax, and donor's tax:

1. Certified true copy of the COVID-19 vaccine procurement agreement/multiparty agreement, as may be applicable. The multi-party agreement on the procurement by the Local Government Units (LGUs) and private entities shall include the DOH and the relevant supplier of the COVID-19 vaccine;
2. Certified true copy of the COVID-19 vaccine's Certificate of Product Registration or Emergency Use Authorization (EUA) issued by the Food and Drug Administration (FDA);
3. "Sworn Declaration" from the taxpayer-buyer/importer/donee that the COVID-19 vaccines shall not be intended for resale or other commercial use and shall be distributed without consideration from persons to be vaccinated, in accordance with the COVID-19 Vaccination Program of the National Government. For private entities, a statement shall be included that any such vaccines shall be for the sole and exclusive use of such entities and their related parties, if any, as discussed under Section 4 of Revenue Regulations No. 19-2020; and,
4. For COVID-19 vaccines donated to the entities mentioned in Section 2 hereof, in addition to the foregoing requirements, the following shall be presented:
 - a. for the National Government and LGUs, a certified true copy of the duly accepted Deed of Donation; and
 - b. for private entities and international humanitarian organizations, a certified true copy of the duly accepted Deed of Donation and/or BIR Form 2322 (Certificate of Donation)

Rev. Regs. No. 2-2021 dated April 8, 2021

Amending Certain Provisions of Revenue Regulations No. 2-98, as amended, to Implement the Amendments Introduced by Republic Act No. 11534, or the "Corporate Recovery and Tax Incentives for Enterprises Act" (CREATE), to the National Internal Revenue Code of 1997, as amended, Relative to the Final Tax on Certain Passive Income

Pursuant to Section 21 of Republic Act No. 11534, or CREATE, certain provisions of Revenue Regulations (RR) No. 2-98, as amended, are hereby further amended to implement the new final tax rates on certain passive incomes of individuals and corporations.

Section 2.57.1(B)(1)(e) of RR No. 2-98 on income payment to non-resident aliens engaged in trade or business in the Philippines is amended imposing twenty percent (20%) final tax on passive income received from all sources within the Philippines on prizes (except prizes amounting to Ten Thousand Pesos [P10,000] or less which shall be subject to tax under Subsection [B][1] of Section 24 of the Tax Code, as amended) and other winnings (except winnings from Philippine Charity Sweepstakes Office [PCSO] games amounting to P10,000 or less which shall be exempt from income tax).

Section 2.57.1 (E) of RR No. 2-98 on income payment to a resident foreign corporation is amended to impose new final withholding tax rates on the following forms of income, based on the gross amount thereof:

1. Interest on any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines — **Twenty percent (20%);**
2. Interest income derived from a Depository Bank under the Expanded Foreign Currency Deposit System — **Fifteen percent (15%);**
3. Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange. — On the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation — **Fifteen Percent (15%).**

Section 2.57.1 (F) of RR No. 2-98 on Income Derived From all Sources Within the Philippines by Non-Resident Foreign Corporation (NRFC) is amended to impose new final withholding tax rates on the following forms of income, based on the gross amount thereof:

1. In general — on gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under item 7 hereof) — January 1, 2021 onwards — **Twenty-five percent (25%);**
2. Dividends received from a domestic corporation — In general, it is subject to Twenty-five percent (25%) final withholding tax. However, **a reduced rate of Fifteen percent (15%)** shall be applied, subject to the condition that the country in which the non-resident foreign corporation is domiciled (a) shall allow a credit against the tax due from the said non-resident foreign corporation which are equivalent to taxes deemed to have been paid in the Philippines equal to ten percent (10%) effective January 1, 2021, which represents the difference between the regular income tax rate for non-resident foreign corporation under Section 28(B)(1) of the NIRC

- of 1997, as amended, and the fifteen percent (15%) tax on dividends as herein provided; or,
(b) does not impose any income tax on dividends received from a domestic corporation;
3. Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange. — On net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation — **Fifteen percent (15%)**.

Further, any taxes withheld from persons/entities where the withholding agents used the rate higher than what are imposed in these Regulations, may be claimed as tax refund by the withholding agents if the withheld taxes have already been remitted, provided that, in case the withholding agents or other persons/entities shall file the claim for refund for and on behalf of the payees, they must be duly authorized by said payees. The claim for refund shall be filed with the Revenue District Office/Large Taxpayer Service having jurisdiction over the withholding agents.

Rev. Regs. No. 3-2021 dated April 8, 2021

Rules and Regulations Implementing Section 3 of Republic Act (RA) No. 11534, otherwise known as the "Corporate Recovery and Tax Incentives for Enterprises Act" or "CREATE," amending Section 20 of the National Internal Revenue Code of 1997, as amended

Pursuant to Section 20 (B) of the Tax Code, as amended by CREATE, the Secretary of Finance may order the Commissioner of Internal Revenue to furnish the DOF such specifically identified information related to entities receiving incentives under Title XIII of the Tax Code of 1997 (i.e., tax incentives), as amended, with justification clearly stated therefor.

The “Tax Related and Pertinent Information” shall refer to tax returns and any amendments thereof, including those pertinent information which can be associated with, directly or indirectly, to a particular taxpayer, regarding its business income, operations, style or the work or apparatus of any manufacturer or producer.

A request for tax related and pertinent information of entities receiving incentives under Title XIII of the Tax Code of 1997, as amended, shall be made upon authority of the Secretary of Finance and shall be addressed to the Commissioner of Internal Revenue. It shall identify the specific information sought, as well as the reason or justification for the request for information related to the incentives granted to a particular entity.

Under no circumstance shall a revenue official or employee provide or make known, in any manner, official information or documents to the DOF, specifically on information relative to the grant of incentives, without the prior written approval of the Commissioner of Internal Revenue.

Liability for Disclosure of Tax-Related Information - The Secretary of Finance and the relevant officers and employees in the DOF handling such specific information obtained from the Commissioner of Internal Revenue shall be covered by the provisions of Section 270 of the Tax Code of 1997, as amended, unless the taxpayer consents in writing to such disclosure.

Rev. Regs. No. 4-2021 dated April 8, 2021

Implementing the Provisions on Value-Added Tax (VAT) and Percentage Tax Under Republic Act (RA) No. 11534, Otherwise Known as the "Corporate Recovery and Tax Incentives for Enterprises Act" (CREATE) Which Further Amended the National Internal Revenue Code of 1997, as Amended, as Implemented by Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended

Pursuant to the provisions of CREATE amending Sections 109 and 116 of the Tax Code, as amended, Sections 4.109-1, and 4.116-1 of RR No. 16-2005, as amended.

Section 4.109-1(B) of RR No. 16-2005 is amended to include the following VAT exempt transactions:

1. Sale of residential lot valued at One Million Five Hundred Thousand Pesos (P1,500,000.00) and below, or house & lot and other residential dwellings valued at Two Million Five Hundred Thousand Pesos (P2,500,000.00) and below, as adjusted in 2011 using the 2010 Consumer Price Index values.

Provided, That beginning January 1, 2021, the VAT exemption shall only apply to sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business; sale of real property utilized for socialized housing as defined by Republic Act (RA) No. 7279, as amended; and, sale of house and lot, and other residential dwellings with selling price of not more than Two Million Pesos (P2,000,000.00), as adjusted in 2011 using the 2010 Consumer Price Index values: Provided, further, That every three (3) years thereafter, the amounts stated herein shall be adjusted to its present value using the Consumer Price Index as published by the Philippine Statistics Authority (PSA).

2. Sale, importation, printing or publication of books, and any newspaper, magazine, journal, review bulletin, or any such educational reading material covered by the United Nations Educational, Scientific and Cultural Organization (UNESCO) Agreement on the importation of educational, scientific and cultural materials, including the digital or electronic format thereof. Provided, That the materials enumerated herein are not devoted principally to the publication of paid advertisements. Provided further, That the materials enumerated herein are compliant with the requirements set forth by the National Book Development Board pursuant to R.A. No. 8047.
3. Sale or importation of prescription drugs and medicines for:
 - (i) Diabetes, high cholesterol, and hypertension beginning January 1, 2020; and
 - (ii) Cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2021.

The exemption from VAT under this subsection shall only apply to the sale or importation by the manufacturers, distributors, wholesalers and retailer of drugs and medicines included in

the "list of approved drugs and medicines" issued by the Department of Health (DOH) for this purpose.

4. Sale or importation of the following beginning January 1, 2021 to December 31, 2023:
 - (i) Capital equipment, its spare parts and raw materials, necessary for the production of personal protective equipment (PPE) components such as coveralls, gown, surgical cap, surgical mask, n-95 mask, scrub suits, goggles and face shield, double or surgical gloves, dedicated shoes, and shoe covers, for COVID-19 prevention;
 - (ii) All drugs, vaccines and medical devices specifically prescribed and directly used for the treatment of COVID-19; and
 - (iii) Drugs for the treatment of COVID-19 approved by the Food and Drug Administration (FDA) for use in clinical trials, including raw materials directly necessary for the production of such drugs.

Provided, That the Department of Trade and Industry (DTI) shall certify that such equipment, spare parts or raw materials for importation are not locally available or insufficient in quantity, or not in accordance with the quality or specification required.

Provided further, That for item (ii), within sixty (60) days from the effectivity of the CREATE, and every three (3) months thereafter, the Department of Health (DOH) shall issue a list of prescription drugs and medical devices covered by this provision.

Provided finally, That for items (i) and (iii) hereof, on the sale or importation of equipment, spare parts and raw materials for the production of PPE components as well as the sale or importation of raw materials directly necessary for the production of drugs for the treatment of COVID-19, the supplier/s or importer shall submit, for the purpose of availing the exemption, the following:

- (1) Certified true copy of "License to Operate," issued to the manufacturer-buyer by the DOH-FDA authorizing the manufacture of medical grade PPE components and drugs for the treatment of COVID-19; and
- (2) "Sworn Declaration" from the manufacturer-buyer that the items shall be used for the manufacture of the PPE components and drugs for the treatment of COVID-19.

5. Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of Three Million Pesos (P3,000,000.00).

Section 4.116 of RR No. 16-2005 on Tax on Persons Exempt from VAT provides that any person whose sales or receipts are exempt under Section 109(1)(CC) of the Tax Code from the payment of VAT and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts: Provided, however, that the following shall be exempt from the payment of three percent (3%) percentage tax:

1. Cooperatives; and
2. Self-employed individuals and professionals availing of the 8% tax on gross sales and/or receipts and other non-operating income, under Sections 24(A)(2)(b) and 24(A)(2)(c)(2)(a) of the Tax Code.

Provided, further, that effective July 1, 2020 until June 30, 2023, the rate shall be one percent (1%).

Further, a VAT-registered taxpayer who opted to register as non-VAT as a result of the additional VAT-exempt provisions, as amended by CREATE Act and provided that it did not meet the threshold set under Section 109 (1) (CC) thereof, shall:

- a. Submit an inventory list of unused invoices and/or receipts as of the date of filing of application for update of registration from VAT to Non-VAT, indicating the number of booklets and its corresponding serial numbers; and
- b. Surrender the said invoices and/or receipts for cancellation.

The taxpayer shall treat the resulting excess taxes paid due to the inclusion in the items exempt from VAT or adjustment in percentage tax rates, as the case may be, in the following manner:

- a. Unutilized VAT paid on local purchases and importation under subsections 4.109-1 (B) (aa) (ii) and 4.109-1 (B) (bb) hereof from their specified effectivity under R.A. No. 11534 on January 1, 2021 until the effectivity of these Regulations may be carried-over to the succeeding taxable quarter/s or be charged as part of cost, pursuant to Section 110 of the Tax Code; and
- b. Excess percentage tax payments as a result of the decrease of tax rate from 3% to 1% starting July 1, 2020 until the effectivity of these Regulations may be carried forward to the succeeding taxable quarter/s by reflecting the excess percentage tax payment.

Finally, excess/unutilized input taxes as a result of the change of status from VAT to Non-VAT registration under Sec. 112 (B) of the Tax Code of 1997, as amended, may be subject to refund or the issuance of Tax Credit Certificate (TCC), at the option of the taxpayer.

Rev. Regs. No. 5-2021 dated April 8, 2021

Implementing the New Income Tax Rates on the Regular Income of Corporations, on Certain Passive Incomes, Including Additional Allowable Deductions from Gross Income of Persons Engaged in Business or Practice of Profession Pursuant to Republic Act (RA) No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises Act" (CREATE), Which Further Amended the National Internal Revenue Code (NIRC) of 1997

Pursuant to Section 21 of CREATE, these Regulations were promulgated to implement the new income tax rates on the regular income of corporations, on certain passive incomes and additional allowable deductions of persons engaged in business or practice of profession as provided for in the CREATE.

A. **Corporate Income Tax Rates.** — The matrix below shows the new income tax rates applicable to the regular taxable income of corporations:

Type of Corporation	The higher between the “Regular” or “Minimum Corporate Income Tax (MCIT)” rates			
	Regular		MCIT	
	Rate	Effectivity	Rate	Effectivity
Domestic Corporation:				
Domestic Corporation, in general	25%	July 1, 2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023
For corporations with net taxable income not exceeding Five Million Pesos (P5,000,000) AND total assets not exceeding One Hundred Million (P100,000,000), excluding the land on which the particular business entity's office, plant and equipment are situated	20%	July 1, 2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023
Proprietary Educational Institutions and Hospitals	1%	July 1, 2020 to June 30, 2023	Not Applicable	
	10%	July 1, 2023		
Foreign Corporation [on taxable income (e.g., net or gross income, as applicable) derived from all sources within the Philippines]				
Resident Foreign Corporation	25%	July 1, 2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023
Offshore Banking Unit (OBUs) (Note: OBUs shall	25%	Upon the effectivity of the	1%	Upon the effectivity of the CREATE until June 30, 2023

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now be taxed as resident foreign corporation upon effectivity of the CREATE)		CREATE	2%	July 1, 2023
Regional Operating Headquarters (ROHQ)	25%	January 1, 2021	1%	January 1, 2022 to June 30, 2023
			2%	July 1, 2023
Non-Resident Foreign Corporation	25%	January 1, 2021	Not Applicable	

Domestic corporations shall account separately in their Annual Financial Statements (AFS) the cost of the land on which the particular business entity's office, plant and equipment are situated, and shall not lump the same in one account title nor consolidate its cost with other fixed asset accounts.

B. Income Tax Rates on Certain Passive Incomes. — The matrix below shows the new income tax rates applicable to certain passive incomes of individuals and corporations.

Type of Individual/ Corporation	Nature of Income	Rate	Effectivity
Non-Resident Alien Individual	Winnings from Philippine Charity Sweepstakes Office (PCSO) games amounting to more than P10,000.00	20%	Upon the effectivity of the CREATE
	Winnings from PCSO games amounting to P10,000.00 and below	Exempt	
Domestic Corporation	Intercorporate Dividends (domestic and foreign source dividends)	From another domestic corporation — Exempt From nonresident foreign corporation — 25% or 20%, as the case may be	For foreign source dividends, these will be exempt from income tax upon the effectivity of the CREATE, <u>subject</u> to the conditions imposed under <u>Section 5</u> of these Regulations

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Resident Foreign Corporation	Interest income from a depository bank under the expanded foreign currency deposit system	15%	Upon the effectivity of the CREATE
	Capital gains from sale of shares of stock not traded in the stock exchange	15%	Upon the effectivity of the CREATE
Non-resident Foreign Corporation	Gross income received from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains from sale of shares of stock not traded in the stock exchange	25%	January 1, 2021
	Intercorporate dividend received from a domestic corporation, in general	25%	January 1, 2021

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	However, if the country in which the non-resident foreign corporation is domiciled, allows a tax credit equivalent to the difference between the regular income tax rate of 25% under Section 28 (B) (1) of the Tax Code (25%) and the fifteen percent (15%) tax on intercorporate dividends or does not impose tax on dividends, the rate to be imposed shall be 15%	15%	January 1, 2021
	Capital gains from sale of shares of stock not traded in the stock exchange	15%	Upon the effectivity of the CREATE

C. Exemption from Income Tax of Foreign-Sourced Dividends Received by Domestic Corporations.

— In general, foreign-sourced dividends received by domestic corporations are subject to income tax. However, the same shall be exempt if all of the following conditions concur:

- a. The dividends actually received or remitted into the Philippines are reinvested in the business operations of the domestic corporation within the next taxable year from the time the foreign-source dividends were received or remitted;
- b. The dividends received shall only be used to fund the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, and infrastructure project; and
- c. The domestic corporation holds directly at least twenty percent (20%) in value of the outstanding shares of the foreign corporation and has held the shareholdings uninterrupted for a minimum of two (2) years at the time of the dividends distribution. In case the foreign corporation has been in existence for less than two (2) years at the time of dividends distribution, then the domestic corporation must have continuously held directly at least twenty percent (20%) in value of the foreign corporation's outstanding shares during the entire existence of the corporation.

To avail of the exemption, the domestic corporation shall:

1. Submit within thirty (30) calendar days from actual receipt of the remitted dividends a Sworn Statement/Affidavit containing (i) the fact of actual receipt of such dividends, (ii) the amount and the source (non-resident foreign corporation [NRFC]) of such dividends, including their shareholdings in that NRFC and the holding period at the time of the dividends distribution, and (iii) a statement that they shall fully comply with the conditions of the exemptions above stated;
2. In the year of receipt of dividend, attach to the Audited Financial Statements (AFS) an Independent Auditor Sworn Certification as to (i) the fact of actual receipt of the remitted dividends, (ii) the amount and the source (NRFC) of such dividends, including their shareholdings in that NRFC and the holding period at the time of the dividends distribution, (iii) the fact that the domestic corporation, thru its Board, has appropriated or has a plan to reinvest the dividends in its business operations to fund its working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, or infrastructure project, and (iv) if any amount has been disbursed, a statement that said disbursement complies with the above requirements.
3. In the immediately following taxable year, attach to the AITR a Sworn Certification prepared and executed by an Independent Auditor on the utilization or non-utilization of the dividends received by the corporation. The Sworn Certification on the utilization of the dividends received shall confirm the taxpayer's full compliance with the conditions for its exemption. However, if the Certification will state non-utilization of the dividends received, the corresponding tax due on the unutilized dividends shall be declared as taxable income, subject to surcharges, interest, and penalty, if any.

Further, no credit or deduction under Section 34 (C) of the Tax Code shall be allowed for any taxes of foreign countries paid or incurred by the domestic corporation in relation to the exempt foreign-sourced dividends.

- D. **Improperly Accumulated Earnings Tax.** — The improperly accumulated earnings tax shall no longer be imposed on corporations upon the effectivity of the CREATE onwards. This shall apply to the entire taxable year for all fiscal years/taxable years ending after the effectivity of CREATE.
- E. **Allowable Deductions from Gross Income for Business Persons.** — Upon the effectivity of the CREATE, an additional deduction from taxable income of one-half (1/2) of the value of labor training expenses incurred for skills development of enterprise-based trainees enrolled in Public Senior High Schools, Public Higher Education Institutions, or Public Education Institution, or Public Technical and Vocational Institutions and duly covered by an apprenticeship agreement under Presidential Decree No. 442, Series of 1974, or the Labor Code of the Philippines, as amended, shall be granted to enterprises. Provided, further, that for the additional deduction for enterprise-based training of students from Public Educational Institutions, the enterprise shall

secure proper "certification" from the Department of Education (DepEd), Technical Education and Skills Development Authority (TESDA), or Commission on Higher Education (CHED). Provided, finally, that such deduction shall not exceed Ten Percent (10%) of Direct Labor Wage.

Rev. Regs. No. 6-2021 dated April 13, 2021

Prescribing the Additional Guidelines for Implementing the Tax Provisions of the Personal Equity and Retirement Account (PERA) Act of 2008 Effectively Amending Pertinent Provisions of Revenue Regulations No. 17-2011

This Regulation was issued to prescribe additional guidelines for the proper implementation of the tax provisions of Republic Act (RA) No. 9505, otherwise known as the "Personal Equity and Retirement Account" (PERA) Act of 2008. In effect, it amends certain provisions of Rev. Regs. No. 17-2011.

PERA Administrators are mandated to comply with the following reportorial requirements through the ePERA system:

Name of Report	Due Date of Submission
Quarterly Report on PERA Contributions	Not later than the 15th day following the close of every quarter
Quarterly Report on PERA Distributions/ Early Withdrawals / Terminations	Within sixty (60) days following the end of the quarter of the date of termination or withdrawal
Annual Report on PERA Contributions	Within sixty (60) days from the close of the calendar year
Annual Report on PERA Distributions / Early Withdrawals / Terminations	Within sixty (60) days from the close of the calendar year
Alphalist of PERA Contributors	Within sixty (60) days from the close of the calendar year

An application for the issuance of a PERA-Tax Credit Certificate (TCC), or the document evidencing the amount of tax credit equivalent to five percent (5%) of the total amount of qualified PERA contributions in a year, is filed online through the PERASys by the PERA Administrator. Filing shall be made within sixty (60) days from the close of the calendar year. The PERA-TCC may be utilized for income tax liabilities of qualified employees or self-employed contributors or for payment of any internal revenue taxes for overseas Filipino contributors.

Finally, PERA Administrators are directed to remit the penalties of five percent (5%) and twenty percent (20%) for early withdrawal of qualified contribution as provided under Rev. Regs. No. 10-16 through online filing and payment facilities on or before the last day of the month following the close of the calendar quarter during which the deduction was made.

Revenue Memorandum Circulars

Revenue Memorandum Circular No. 45-2021 dated April 5, 2021

Extension of the Deadline for the Filing of Position Papers, Replies, Protests, Documents and Other Similar Letters and Correspondences in Relation to Ongoing BIR Audit Investigations, and Filing of VAT Refund with VAT Credit Audit Division (VCAD)

This Circular was issued in order to provide relief to taxpayers in relation to the current surge in COVID-19 cases prompting the government to impose Enhanced Community Quarantine (ECQ) in NCR Plus which includes Metro Manila, Laguna, Cavite, Bulacan, and Rizal thereby restricting movement within these areas.

Thus, the deadline for the filing of letters and documents falling due on April 5, 2021 and during the ECQ period, including extensions thereof, and for filing of VAT refund with VAD, for taxpayers registered with RDOs in NCR Plus areas and other registered taxpayers outside NCR Plus who have transactions with any BIR office within NCR Plus, was extended as follows:

Letter/Correspondence	Extended Deadline
Position Paper and Supporting Documents in Response to Notice of Discrepancy	30 days from lifting of the ECQ
Reply and Supporting Documents in Response to the Preliminary Assessment Notice (PAN)	15 days from lifting of the ECQ
Protest Letter in Response to the Final Assessment Notice/Formal Letter of Demand (FAN/FLD)	30 days from lifting of the ECQ
Transmittal Letter and Supporting Documents in relation to Request for Reinvestigation	30 days from lifting of the ECQ
Request for Reconsideration to the Commissioner of Internal Revenue (CIR) on Final Decision on Disputed Assessment (FDDA)	30 days from lifting of the ECQ
Submission of Documents in Response to Subpoena Duces Tecum	15 days from lifting of the ECQ

Submission of Documents in relation to First, Second and Final Notice	10 days from lifting of the ECQ
Other Similar Letters and Correspondences	30 days from lifting of the ECQ
Filing of VAT Refund with VCAD which falls due on April 12, 2021 per RMC No. 39-2021	30 days from lifting of the ECQ

Moreover, the RMC clarified that face-to-face meetings of BIR officials and employees with taxpayers and/or their authorized representatives in NCR Plus areas during this time were rescheduled until lifting of ECQ.

Revenue Memorandum Circular No. 46-2021 dated April 6, 2021

Clarifying the Deadline for Filing of Annual Income Tax Returns (AITR) for Taxable Year Ending December 31,2020; Providing Guidelines in the Manner of Filing Thereof Including the Use of Electronic Signature; and Reiterating Availability of eAFS

This Memorandum Circular was issued to address the query of a number of taxpayers and tax practitioners, citing news reports that the April 15, 2021 deadline for filing AITR for taxable year ending December 31, 2020 has been extended.

The BIR confirmed that the deadline for filing said return and payment of taxes due thereon has not been extended and remains to be on April 15, 2021. To alleviate the hardships in beating the deadline being encountered during these challenging times, tentative AITR’s however, may be filed on or before the set deadline. The return may be amended on or before May 15, 2021 without imposition of increments. Provided that, a taxpayer whose amended returns will result in overpayment of taxes paid can opt to carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding period or file for refund.

Further, pursuant to Republic Act No. 8792 or the Electronic Commerce Act of 2000, all tax returns, attachments and documents identified above can be signed by the taxpayer or its authorized officer or signatory through an electronic signature.

Revenue Memorandum Circular No. 49-2021 dated April 8, 2021

Circularizing Republic Act No. 11517, entitled “An Act Authorizing the President to Expedite the Processing and Issuance of National and Local Permits, Licenses and Certifications in Times of National Emergency”

This Circular was issued to expedite the processing and issuance of national and local permits, licenses and certifications in times of national emergency. Thus, notwithstanding any law, decree, order or ordinance to the contrary, the President, in times of national emergency shall have the authority to:

- a. Accelerate and streamline regulatory processes and procedures for new and pending applications and renewals of permits, licenses, clearances, certifications or authorizations, including fixing or shortening the periods provided for under existing laws, regulations, issuances, and ordinances;
- b. Suspend or waive the requirements in securing such permits, licenses, clearances, certifications or authorizations; and
- c. In consultation with or upon the recommendation of the affected government agencies, may prescribe to be permanent the streamlined regulatory processes and procedures, and the suspension or waiver of the requirements in securing permits, licenses, clearances, and certifications or authorizations:

Provided, That the authority granted under subparagraphs (a), (b), and (c) of Section 2 of the RA shall not be used to undermine the existing procedures and processes, under applicable laws, rules and regulations, meant to protect the environment, especially those that aim to safeguard protected areas and its buffer zones, and environmentally critical areas.

Consistent with Article VII, Sections 1 and 17 of the Constitution, the Revised Administrative Code, other existing laws, and jurisprudence, the President shall have the authority to suspend or remove any government official or employee performing acts contrary to the preceding section.

Revenue Memorandum Circular No. 50-2021 dated April 8, 2021

Guidelines in the Filing and Payment of Annual Income Tax Return by Non-Individual Taxpayers for the Taxable Years Ending July 31, 2020 to June 30, 2021

This Circular is being issued to prescribe the Guidelines in the filing and payment of Annual Income Tax Return (AITR) by Non-Individual Taxpayers for the Taxable Year ending July 31, 2020 to June 30, 2021 which was affected by the passing of Republic Act (RA) No. 11534 or also known as the “Corporate Recovery and Tax Incentives for Enterprises Act” (CREATE).

Non-Individual taxpayers, whether eFPS or Non-eFPS Filers, shall use the Offline eBIRForms Package v7.9 (herein referred to as “eBIRForms”) in filing their AITR.

The eBIRForms is available for downloading from the BIR Website (www.bir.gov.ph) and (www.knowyourtaxes.ph). Taxpayers who shall use the eBIRForms shall follow the following procedures:

Step 1. Download, Install and Run Offline eBIRForms Package v7.9

Step 2. Open the installed Package in Drive C by clicking the eBIRForms folder, then click the BIR Logo or the Yellow Icon

Step 3. Complete the Profile page by indicating the needed information (i.e., TIN, Registered Name, Registered Address, RDO Code, etc.) then select the applicable tax return from the List of BIR Forms then click “Fill up”. System will ask the taxpayer to re-enter the TIN and the valid email address to confirm that the information provided are correct. Then click “Fill up” again.

Step 4: Accomplish the selected tax return by directly encoding data in it. The items/fields specified in the Circular shall be accomplished.

Step 5. Click Validate after accomplishing the tax return. If there are changes to make, click Edit button. Make sure to validate after every change made.

Step 6. Click Submit/Final Copy button to submit the return online. Make sure that you are connected to the internet before you submit the return. Taxpayer shall be required to agree to the Terms of Service Agreement (TOSA).

Step 7. If submission is successful, pop up message will appear stating:

“Submit Successful! A notification will be sent to your email (email address provided). Please ensure that said email address is correct then check your inbox (including your spam folder) in the next few minutes for the email. Print or save the email as evidence of e-filed return”.

Step 8. Taxpayer shall receive a Tax Return Receipt Confirmation that the BIR has received the submitted return.

The BIR Form Nos. 1702-RT, 1702-MX and 1702-EX version 2018 in the new Package has been modified and added letter “C” after the version date (i.e. 1702- RTv2018C, 1702- MXv2018C and 1702- EXv2018C). The automatic computation of tax due has been disabled and taxpayer shall indicate the rate of tax applicable based on the matrix below, depending on the taxable period of the taxpayer.

TRANSITORY RATES				
Annual Accounting Period (Transition TY 2020)	Regular Corporate Income Tax Rates	Other Domestic Corporations with Net Taxable Income ≤ 5M and Total Assets ≤ 100M, Exclusive of Land	MCIT	Proprietary Non-Profit Educational Institutions / Hospitals
	30% / 25%	30% / 20%	2% / 1%	2% / 1%
FY 7-31-20	29.58%	29.16%	1.91%	9.25%

DISCLAIMER: The contents of this bulletin are summaries of selected issuances from various government agencies and Court decisions. They are intended for guidance only and as such should not be regarded as a substitute for professional advice.

FY 8-31-20	29/16	28.33	1.82	8.50
FY 9-31-20	28.75	27.50	1.73	7.75
FY 10-31-20	28.33	26.66	1.64	7.00
FY 11-31-20	27.91	25.83	1.55	6.25
CY 12-31-20	27.50	25.00	1.50	5.50
FY 1-31-21	27.08	24.16	1.41	4.75
FY 2-28-21	26.66	23.33	1.32	4.00
FY 3-31-21	26.25	22.50	1.23	3.25
FY 4-30-21	25.83	21.66	1.14	2.50
FY 5-31-21	25.41	20.83	1.05	1.75
FY 6-30-21	25.00	20.00	1.00	1.00

Payments of the taxes due thereon, if any, shall be made thru:

a. Manual Payment – Non-eFPS Filers

Any Authorized Agent Banks (AABs) as provided under Revenue Memorandum Circular (RMC) No. 41-2021. In places where there are no AABs, the return shall be filed and the tax due shall be paid with the Revenue Collection Officer (RCO) under the jurisdiction of any Revenue District Office (RDO).

b. Online Payment – Non-eFPS Filers

- Mobile Payment (GCash/PayMaya); or
- Landbank of the Philippines (LBP) Link.BizPortal – for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card; or
- Development Bank of the Philippines (DBP) Tax Online – for taxpayers-holders of Visa/Master Credit Card and/or Bancnet ATM Debit Card; or
- Union Bank Online Web and Mobile Payment Facility – for taxpayers who have account with Union Bank; or
- PESONet through LBP Link.BizPortal – for taxpayers who have account with RCBC, Robinsons Bank, Union Bank and BPI.

Revenue Memorandum Circular No. 52-2021 dated April 14, 2021

Suspension of the Running of the Statute of Limitations on Assessment and Collection of Taxes Due to the Declaration of Enhanced Community Quarantine in Metro Manila, Bulacan, Cavite, Laguna, and Rizal (NCR Plus) and other Applicable Jurisdictions

This Circular was issued in light of the declaration of Enhanced Community Quarantine (ECQ) in NCR Plus from March 29, 2021 to April 4, 2021 and its further extension from April 5, 2021 to April 11, 2021, which effectively hindered assessment and collection of taxes.

Pursuant to Section 223 of the National Internal Revenue Code of 1997, as amended, the Circular directed that the running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdiction while the ECQ is in effect, including any extension/s thereof, and for sixty (60) days thereafter. This suspension shall apply with respect to the issuance and service of assessment notices, warrants and enforcement, and/or collection of deficiency taxes.

Revenue Memorandum Circular No. 54-2021 dated April 27, 2021

Clarifies Certain Provisions of Revenue Regulations (Rev. Regs.) No. 34-2020

This Circular addressed frequently asked questions regarding the submission of BIR Form No. 1709 (RPT Form) and the preparation of Transfer Pricing Documentation (TPD) following the amendments brought about by Rev. Regs. No. 34-2020 to Rev. Regs. No. 19-2020.

Who are required to accomplish and file BIR Form 1709 (RPT)

A taxpayer is required to file an RPT form if the following conditions are present:

1. The taxpayer is required to file an Annual Income Tax Return (AITR);
2. The taxpayer has transactions with a domestic or foreign related party during the concerned taxable period; and
3. The taxpayer is any one of the following:
 - a. Large taxpayer;
 - b. Taxpayer enjoying tax incentives;
 - c. Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years;
 - d. A related party that has transactions with (a), (b) or (c).

Large Taxpayer

As provided under Rev. Regs. No. 1-1998, a large taxpayer is a taxpayer classified and duly notified by the Commissioner for having satisfied any or a combination of set criteria as prescribed therein. A taxpayer who meets any of the set criteria but was not notified by the Commissioner cannot be considered a large taxpayer.

Accomplishing the RPT Form and Preparing a TPD

As to whether the report must be a lump-sum amount or a per transaction basis, the Circular clarified that similar transactions with the same related party, if possible, must be aggregated.

As to its attachments, the last paragraph of Rev. Regs. No. 34-2020 provides that the TPD and other supporting documents shall no longer be attached to the RPT Form. Instead, these documents shall be made available during audit.

As to whether a reasonable estimate of related party transactions may be sufficient, the Circular clarified that no less than the actual amounts of the related party transactions shall be declared in the RPT Form. The RPT Form, just like other tax returns, contains a perjury clause.

As to whether shares in net income from associates or joint ventures should be disclosed, the Circular clarified that the nature of these net income is akin to dividends. Therefore, it is not required to be reported in the RPT Form.

As to what currency must be used, the amounts must be in foreign currency and its equivalent in the local currency. However, if several currencies were used and it is impractical to indicate all of them in the RPT Form, their equivalent in the local currency should instead be disclosed. In all cases, the exchange rate to be used must be the rate at the date of transaction.

Taxpayers subject to preferential income tax rate

To determine whether a taxpayer is subject to preferential income tax rate, reference must be made to the Tax Code or other special laws on how these taxpayers are taxed as a whole and not on a per transaction basis. A corporate taxpayer subject to regular corporate income tax but has transactions subject to preferential income tax rate under tax treaties or the Tax Code are not required to file an RPT Form, as long as they do not fall under Section 2(a), (c) and (d).

Taxpayer operating within the economic zone

A taxpayer operating within the economic zone subject to regular corporate income tax is not required to file an RPT Form because only those enjoying tax incentives with respect to income tax (*i.e.* Income Tax Holiday or 5% Special Tax on Gross Income) are required to file the same. However, if the taxpayer falls under Section 2(a), (c) and (d), then it is required to file an RPT Form.

Tax-exempt corporation

Taxpayers exempt from income tax are not required to file an RPT Form, including those regional or area headquarters and representative offices of foreign corporations that are not allowed by law to derive income from the Philippines. Moreover, post-employment benefit plans are also not required to file an RPT Form if their related party transactions consist only of the contributions from their sponsor employers.

Domestic Party Disclosure Requirements

If a domestic party had transactions with a non-resident foreign related party that reported net operating losses for the current taxable year and the last two immediately preceding taxable years,

such domestic party is not required to file an RPT Form since the non-resident foreign related party is also not required to file the same.

Disclosure for Taxpayers Not Required to File an RPT Form Prior to Rev. Regs. No. 34-2020

Taxpayers who are not required to file an RPT Form and have already finalized their AFS for taxable year 2020 prior to the effectivity of Rev. Regs. No. 34-2020 are not expected to comply with the mandate of Section 4 of the said Regulations. Section 4 only applies to the AFS that are required to be submitted after the effectivity of Rev. Regs. No. 34-2020.

Net Operating Losses

In determining net operating losses, the basis for the same shall be the AITR, not the amount reflected in the Audited Financial Statements (AFS). Registration fees, business permits, licenses and taxes, except those enumerated under Section 34(C)(1) of the Tax Code, are allowable deductions and should therefore be considered in computing net operating losses.

Materiality Threshold for Related Party Transactions to be Reported

A taxpayer required to file an RPT Form must disclose all related party transactions irrespective of the amount involved. The materiality threshold is only relevant in determining taxpayers required to prepare Transfer Pricing Documentation (TPD).

Taxpayer Not Required to File an RPT Form but Satisfied the Materiality Thresholds

Sections 2 and 3 of Rev. Regs. No. 34-2020 are interrelated. Section 2 enumerates the taxpayers required to file an RPT Form, while Section 3 provides the conditions to be met by these taxpayers before they may be obliged to prepare a TPD.

The enumeration under Section 2 is exclusive. A taxpayer required to file an RPT Form shall only prepare a TPD if it satisfied any of the conditions set out under Section 3. If the taxpayer is not required to file an RPT Form, then it is also not required to prepare a TPD.

Nevertheless, any taxpayer may prepare a TPD and present the same during audit to prove that its related party transactions were conducted at arm's length.

Who are required to prepare a TPD

A taxpayer is required to prepare a TPD if it meets any of the following:

1. Annual gross sales/revenue for the subject taxable period exceeds Php150,000,000 and the total amount of related party transactions with foreign and domestic related parties exceeds Php90,000,000.
2. Sale of tangible goods involving the same related party exceeds Php60,000,000 within the taxable year.
3. Service transaction, payment of interest, utilization of intangible goods or other related party transaction involving the same related party exceeds Php15,000,000 within the taxable year.
4. If TPD was required to be prepared during the immediately preceding taxable period for exceeding (a) to (c).

Related Party Transactions under Section 3(a) and (b) of Rev. Regs. No. 34-2020

Section 3(a) refers to transactions involving all related parties in general while Section 3(b) relates to transactions with a specific related party only.

Annual Gross Sales/Revenue

Annual gross sales or revenue under Section 3(a) of Rev. Regs. No. 34-2020 refers to the amount of gross sales/receipts/revenues/fees reported in the AITR, regardless of the source and identity of the other party to the transaction, related or otherwise.

Other Related Party Transaction

Computing the Total Amount of Related Party Transactions

In determining the total amount of related party transactions with foreign and domestic related parties, the sum of the following shall be obtained:

- i. Amounts received and/or receivable (trade receivables) from related parties during the taxable year;
- ii. Amounts paid and/or payable (trade payables) to related parties during the taxable year; and
- iii. Outstanding balances of loans and non-trade amounts due from/to all related parties (non-trade receivables and payables)

The following shall not be included in the computation thereof:

- i. Compensation paid to key management personnel;
- ii. Dividends; and
- iii. Branch profit remittances

Effect of Failure to Supply Material Information

In case of failure to provide any material information, the BIR will consider the RPT Form as not duly filed. Thus, the taxpayer shall be liable to pay the penalty for failure to file the RPT Form.

Transfer Pricing Audit

Through the RPT Forms submitted by the taxpayer, the BIR will conduct an initial transfer pricing risk assessment, identify the high-risk taxpayers and make an informed decision whether or not to conduct a transfer pricing audit of a particular entity or transaction. The determination whether an entity will be subjected to transfer pricing audit will greatly depend on the results of such initial assessment.

Nevertheless, the BIR retains the right to conduct transfer pricing audit against taxpayers with related party transactions, regardless of whether or not they are required to file the RPT Form and prepare a TPD.

When subjected to audit, taxpayers who are not required to file the RPT Form and to prepare a TPD shall present sufficient evidence to prove that their related party transactions were conducted at arm's length.

Approval of Advance Pricing Agreement (APA) for Exemption

In order for the related party transaction covered by an APA to be exempt from disclosure in the RPT Form, the APA form should be approved and accepted by the BIR.

Retroactivity of Rev. Regs. No. 34-2020

Rev. Regs. No. 34-2020 does not have a retroactive effect and shall only apply to RPT Forms required to be submitted after its effectivity on December 23, 2020.