

This MAP Tax Bulletin for June 2021 was contributed by Du-Baladad and Associates (BDB Law).

## HIGHLIGHTS for JUNE 2021

### Supreme Court Decision

- The submission of subsidiary sales journal and subsidiary purchase journal is not indispensable to support a claim for refund. (*Commissioner of Internal Revenue vs. Philex Mining Corporation, G.R. No. 218057, January 18, 2021*)

### Court Of Tax Appeals Decisions

- An administrative appeal with the CIR's authorized representative will not toll the running of the reglementary period. (*Masagana Management Services Corporation vs. Commissioner of Internal Revenue, et. al., CTA Case No. 10071, May 28, 2021*)
- The negligence of a taxpayer's employee in the preparation of inaccurate official receipts is not excusable to justify a new trial. (*BW Shipping Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9660, May 27, 2021*)
- The issuance of FAN/FLD without addressing the taxpayer's refutations in its protest to PAN is a clear violation of the taxpayer's right to administrative due process. (*Chun lang Chan, then operating under Business Name Tokai Rubber Products represented by Li Chuan Chang vs. Commissioner of Internal Revenue, et. al., CTA Case No. 9758, May 26, 2021*)
- RMO No. 69-2010 may not be validly invoked to dispense with the issuance of LOA. (*People of the Philippines vs. Active Travel & Tours, Inc., et. al., CTA Crim. Case Nos. O-737 & O-738, May 24, 2021*)
- In an upstream merger, the parent company, which will be the surviving entity, does not issue shares in exchange for the net assets of the subsidiary. (*Luzminda Land Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10035, May 20, 2021*)
- The CIR's act of declaring taxpayer's ITH as having been voided is ultra vires as this power is reserved exclusively for the BOI. (*Mindanao Mineral Processing Refining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9643, May 19, 2021*)
- The requirements under RA 9513 make no distinction as to what type of incentive it applies. (*Vestas Services Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9544, May 19, 2021*)

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## **BIR Issuances**

- **RR No. 7-2021, May 18, 2021** - This provides for the rules and regulations implementing the provisions of Republic Act nos. 11346 and 11467 on excise tax on alcohol, tobacco, heated tobacco, and vapor products and disposition of excise tax collection.
- **RMC No. 62-2021, May 17, 2021** - This provides for clarifications in relation to certain provisions of RR No. 5-2021 relative to Corporate Income Taxation.
- **RMC 67-2021, May 21, 2021** - This clarifies issues relative to the temporary reduction of percentage tax rate imposed under Section 116 of the NIRC, as amended by CREATE.

## **SEC Issuances**

- **SEC-OGC Opinion No. 21-05 dated May 7, 2021** - This is a legal opinion regarding the increase of authorized capital stock and registration of shares of stock to be issued therefor.

## **BSP Issuances**

- **BSP Circular No. 1117, May 27, 2021** - This amends Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBF) to implement Republic Act (RA) No. 11523, otherwise known as the “Financial Institutions Strategic Transfer (FIST) Act”.
- **BSP Circular Letter No. CL-2021-037, May 10, 2021** - This provides advisory on Electronic Sabong (eSabong).
- **BSP Circular Letter No. CL-2021-041, May 20, 2021** - This provides Anti-Money Laundering Council (AMLC) Resolutions No. TF-39 and TF-40 to issue Sanctions Freeze Order (SFO) to take effect immediately against certain identified individuals affiliated with local terrorist groups.
- **BSP Memorandum No. M-2021-030, May 3, 2021** - This provides an extension of Temporary Measures implemented in the Bangko Sentral ng Pilipinas (BSP) Rediscounting Facilities.

## **IC Issuances**

- **IC Circular Letter CL-2021-35 dated April 30, 2021** - This provides the process for electronic submission of reportorial requirements on fire and motor car policies and bonds issued, sale of a vehicle acquired under total loss claim subrogation, and adjustment cases handled.
- **IC Circular Letter CL-2021-37 dated May 21, 2021** - This provides the process for the online submission of the AML and CTF compliance questionnaire under Circular Letter No. 2020-08.

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# Supreme Court Decision

**The submission of subsidiary sales journal and subsidiary purchase journal is not indispensable to support a claim for refund**

The Court dismissed the petition assailing the grant of a claim for refund by the taxpayer of its unutilized and excess input VAT attributable to zero-rated sales.

In affirming the grant of the claim for refund, the Court noted the four grounds in support of the grant, to wit:

1. Timeliness of the appeal by the taxpayer
2. Entitlement to the refund as ruled by the Second Division of the CTA
3. Considering duly supported zero-rated sales dated outside the period of the claim but actually generated during the same period
4. Presentation of subsidiary sales journal and subsidiary purchase journal is not required for the refund of input tax attributable to zero-rated sales

In discussing the fourth ground, the Court held that there is nothing in the 1997 NIRC, as amended, which requires the presentation of the subsidiary sales journal and subsidiary purchase journal in order for a taxpayer to be entitled to refund, or issuance of a tax credit certificate, of its claimed creditable input tax attributable to zero-rated sales. (*Commissioner of Internal Revenue vs. Philex Mining Corporation, G.R. No. 218057, January 18, 2021*)

## Court of Tax Appeals Decisions

**An administrative appeal with the CIR's authorized representative will not toll the running of the reglementary period.**

The Court dismissed the Petition for Review filed by the taxpayer. At the onset, the Court ruled that the assessments have become final, executory, and demandable and the Court no longer has jurisdiction to act on the Petition for Review.

The CTA ruled that a resort to an administrative appeal with the CIR's authorized representative will not toll the running of the reglementary period within which taxpayer's appeal must be elevated to the CTA or the CIR.

In this case, the taxpayer, when it received the FDDA denying its protest to the FLD it filed, its Motion for Reconsideration with the Regional Director, and not with the CIR. (*Masagana Management Services Corporation vs. Commissioner of Internal Revenue, et. al., CTA Case No. 10071, May 28, 2021*)

**An international air carrier doing business in the Philippines may avail of a preferential rate on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory.**

The CTA partially granted the Petition for Review and ordered the CIR to issue a tax credit certificate in favor of the taxpayer in a reduced amount. It ruled that the taxpayer is entitled to a refund for its erroneously paid income tax. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer with no authority to levy the tax or one which is some other similar aspect is illegal.

Under Section 28(A)(3)(a), an international air carrier doing business in the Philippines shall pay 2 ½% on its GPB but it may avail of a preferential rate from the said tax on its gross revenue derived from the carriage of persons and their excess baggage, on the basis of an applicable tax treaty or international agreement to which the Philippine is a signatory.

Here, as ruled in BIR Ruling No. ITAD 034-17, since the Philippines, as of the said date, has not granted a most-favored treatment to any international air carrier of a third country, the taxpayer is subject to income tax of 1 ½% on its GPB earned beginning January 1, 2014, pursuant to Article 8 of the Philippines-Kuwait tax treaty. Out of the claimed amount of P12,158,469.00 representing the 1% difference between the income tax rates 2 ½% and 1 ½% income tax on the taxpayer's GBPs for the fiscal year 2016, the amount of P11,973,834.71 constitutes erroneously paid taxes. The P184,634.29 disallowed amount represents the taxes withheld that are supported by Certificates either dated prior to the year of the claim or not under the registered name of the taxpayer as a payee. (*Kuwait Airways Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9874, May 28, 2021*)

#### **An involuntary sale of capital assets is subject to capital gains tax.**

The Court denied the motion for reconsideration (Re: Decision Rendered on September 17, 2020) filed by the City Government of Valenzuela, for lack of merit.

The Court stressed that an involuntary sale is subject to capital gains tax. Section 27(D)(5) of the 1997 Tax Code, as amended, states that a capital gains tax of 6% is imposed on the gains presumed to have been realized in the sale, exchange, or disposition of lands and/or buildings, which are not actively used in the business of a corporation, and which are treated as capital assets based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of the NIRC, whichever is higher.

In this case, there was a sale, exchange, or disposition of capital assets within the purview of Section 27(D)(5) of the 1997 Tax Code. (*City Government of Valenzuela, represented by City Mayor Rexlon T. Gatchalian vs. Hon. Caesar R. Dulay, in his capacity as Commissioner of Internal Revenue, CTA Case No. 9872, May 27, 2021*)

#### **The negligence of a taxpayer's employee in the preparation of inaccurate official receipts is not excusable to justify a new trial.**

The Court denied the taxpayer's Omnibus Motion for Reconsideration and Motion for New Trial. In its motion for a new trial, the taxpayer argues that there were mistakes and excusable negligence and submitted an affidavit of merit with attached corrected official receipts and an affidavit of correction.

The Court ruled that the taxpayer failed to specifically point out in its motion for reconsideration, the findings or conclusions of the assailed Decision, which are not supported by evidence or contrary to law. Also, the Court ruled that it cannot allow the submission of the corrected exhibits by way of a new trial on the basis of mistake and inexcusable negligence. It stressed that the 'mistake' allowable in Rule 37 of the Revised Rules of Court is on which ordinary prudence could not have guarded against by reason of which the rights of an aggrieved party have probably been impaired. The test of excusable negligence is whether a party has acted with ordinary prudence while transacting important business.

Here, it cannot be said that taxpayer's cashier or employee who prepared the subject official receipts and inadvertently made inaccurate entries or omitted certain information in the preparation of certain official receipts supporting its zero-rated sales, acted with ordinary prudence in the preparation of said receipts which would entitle it to a reconsideration of its refund claim. Its negligence is not excusable to justify a new trial. (*BW Shipping Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9660, May 27, 2021*)

**The issuance of FAN/FLD without addressing the taxpayer's refutations in its protest to PAN is a clear violation of the taxpayer's right to administrative due process.**

The CTA denied the motion for reconsideration of the CIR for lack of merit.

The Court reiterated the Supreme Court's decision in *Ang Tibay* that administrative tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know various issues involved, and the reasons for the decision rendered. It further stressed that without addressing taxpayer's refutations in its protest, the taxpayer was not informed of particular facts upon which FLD/FAN was based pursuant to Section 228 of the 1997 NIRC, which is a clear violation of the taxpayer's right to administrative due process thereby rendering the subject tax assessments void.

In this case, the taxpayer filed its reply to the PAN, giving explanations against the findings contained in the PAN. However, in the FAN/FLD, the taxpayer was still assessed of the same deficiency tax liabilities in the PAN without providing particular facts upon which the conclusions were based. (*Chun lang Chan, then operating under Business Name Tokai Rubber Products represented by Li Chuan Chang vs. Commissioner of Internal Revenue, et. al., CTA Case No. 9758, May 26, 2021*)

**RMO No. 69-2010 may not be validly invoked to dispense with the issuance of LOA.**

The Court denied the motion for reconsideration of the plaintiff on the civil aspect of the Resolution for lack of merit.

The Court ruled that RMO No. 69-2010 may not be validly invoked to dispense with the issuance of LOA. While the reading of the said RMO shows that a MOA is required to be issued in case of reassignment for a continuation of the audit or investigation of a case to another Revenue Officer (RO), there is nothing therein that dispenses the mandatory issuance of LOA for the purposes of granting authority to a RO to continue the investigation. Thus, considering that the subject assessments are null and void, the accused's civil liability cannot validly prosper. (*People of the Philippines vs. Active Travel & Tours, Inc., et. al., CTA Crim. Case Nos. O-737 & O-738, May 24, 2021*)

**Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.**

The Court denied the taxpayer's motion for reconsideration for being filed out of time.

Under Section 1, Rule 15 of the RRCTA, a motion for reconsideration or new trial shall be filed within fifteen days from receipt of the notice of the decision. In the present case, the taxpayer received the decision on November 10, 2020, hence, it has until November 25, 2020, within which to file its motion for reconsideration. However, it only filed its motion on November 26, 2020. The court further emphasized that procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction. (*Bahay Bonds 2 Special Purpose Trust, administered by Land of the Philippines through its Trusting Banking Group vs. Commissioner of Internal Revenue, CTA Case Nos. 9916, May 24, 2021*)

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**The law only regulates the quantitative restrictions on rice importation but does not outlaw the entry of the same.**

This is a motion for reconsideration filed by the COC arguing that the 603.15 MT of white rice (the subject shipment/excess shipment) imported by the petitioner is a prohibited article under the Customs Modernization and Tariff Act (CMTA) and the release of which is contrary to law.

In denying the COC's motion for reconsideration, the CTA ruled that rice is not included as one of the articles prohibited for importation under the CMTA. Neither is the importation of rice patently proscribed by any other law. Republic Act 8175 only maintained the quantitative restrictions on rice importation but did not outlaw the entry of the same. It further ruled that the petitioner is a holder of a Certificate of Eligibility that authorized it to import 9,250 MT of white rice. The excess shipment of 603.15 MT was within its import limit as it had only used up 7,200 MT thereof. (*Progressive Grains Milling Corp. vs. Commissioner of Customs, CTA Case No. 9847, May 24, 2021 [Resolution]*)

**Section 18 of the IRR of RA 9153 requires the submission of RE Developer's registration with the BOI and Certificate of Endorsement by the DOE as additional conditions to qualify for VAT zero-rating under RA 9513.**

In its motion for reconsideration or reopening of trial, the taxpayer contends the only condition sine qua non to avail of the VAT zero-rating incentive is the DOE Certificate of Registration requirement since Section 15(g) of RA 9513 does not mention either the BOI Certificate of Registration or DOE Certificate of Endorsement. On the other hand, in his motion for partial reconsideration, the CIR argues that the taxpayer's alleged total sales receipts net of the amount of valid zero-rated sales should be subject to 12% output VAT. Accordingly, he asserts that taxpayers should thus be adjudged liable for output VAT.

The Court denied both motions. The Court ruled that Section 18 of the IRR of RA 9153 clearly requires the submission of RE Developer's registration with the BOI and Certificate of Endorsement by the DOE as additional conditions to qualify for VAT zero-rating under RA 9513. It is noteworthy that Section 18 of the IRR of RA 9513 uses the word "shall" in requiring RE Developers to register with the DOE and the BOI and to secure a Certificate of Endorsement from the DOE. The use of the word "shall" indicates that the requirement of presenting all the aforementioned documents is compulsory or mandatory.

As to the CIR's motion for partial reconsideration, the Court ruled that the question of a tax deficiency is distinct and unrelated to a taxpayer's entitlement to a refund. To automatically "offset" the taxpayer's alleged tax liabilities against the claim for refund would be unfair as it would deprive the latter of the opportunity to dispute the same in the proper venue with all the defenses available under the law such as prescription. (*Halliburton Worldwide Limited - Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 9670, May 24, 2021*)

**In an upstream merger, the parent company, "who/which" will be the surviving entity, does not issue shares in exchange for the net assets of the subsidiary.**

This is a motion for reconsideration filed by the CIR arguing that the taxpayer is not entitled to the refund of the alleged erroneously paid WT and DST since the merger between the taxpayer and Marangal Properties, Inc. (MPI) is an upstream merger that does not qualify under Section 40(C)(2) of the NIRC, as amended.

The CTA denied the CIR's motion. It affirmed that the merger between the taxpayer and MPI falls within the purview of Section 40(C)(2) of the NIRC, as amended, thus qualifies as a tax-free merger. It also ruled that the merger between the taxpayer and MPI is not an upstream merger. An upstream merger ensues when the parent

company absorbs its wholly-owned subsidiary. In an upstream merger, the parent company, which will be the surviving entity, does not issue shares in exchange for the net assets of the subsidiary.

Here, the taxpayer, the parent of MPI, sufficiently established that it issued shares equivalent to 40% of the net assets held by Coca-Cola Bottlers Philippines, Inc. (*Luzminda Land Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10035, May 20, 2021*)

**The CIR's act of declaring taxpayer's ITH as having been voided is ultra vires as this power is reserved exclusively for the BOI.**

The taxpayer argues that claims that the assessment has prescribed considering that the waivers are null and void. It further avers that the assessments should be canceled for lack of factual or legal basis.

The CTA ruled that the taxpayer is already estopped from questioning the validity of the waivers. The payment by the taxpayer of the subject deficiency EWT and DST, including increments thereto, belies its insistence that the waivers are invalid.

The CT, nevertheless, partially granted the taxpayer's petition for review. It ruled that the taxpayer's revenues for fiscal year July 1, 2011 to June 30, 2012, should not be subjected to the 30% RCIT, considering that it was still enjoying its status as a BOI-registered enterprise entitled to the income tax holiday (ITH) incentive. It held that CIR has no power to declare taxpayer's ITH as having been voided, as this power is reserved exclusively for the BOI. As such, the assessment of taxpayer's income tax liability on this basis is in error. (*Mindanao Mineral Processing Refining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9643, May 19, 2021*)

**The requirements under RA 9513 make no distinction as to what type of incentive it applies.**

The taxpayer filed its motion for reconsideration arguing that its sales to EDC are subject to zero percent value-added tax (VAT) under Section 108(B)(3) of the NIRC of 1997, as amended. It insists that RA 9513 does not require a Certificate of Endorsement issued by the DOE, on a per-transaction basis, for the imposition of zero percent VAT rate on RE Developer's local purchases of goods, properties, and services. It contends that a plain reading of RA 9513 and its IRR will show that this requirement is only applicable for certain incentives.

In denying the taxpayer's motion for reconsideration, it noted that the taxpayer's arguments are mere reiterations of matters which have already been considered and resolved by the Court. It emphasized that RA 9513 makes no distinction as to what type of incentive it applies. Since the law makes no distinction or exemptions, neither should the Court. It reiterated that a Certificate of Endorsement is required for purposes of entitlement to the incentives and privileges under RA 9513, i.e. VAT zero-rating. (*Vestas Services Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9544, May 19, 2021*)

**If the FLD/FAN and FDDA are void, it follows that the legal obligation of the taxpayer to pay the subject deficiency tax assessments did not arise.**

The accused are charged with willful failure to pay deficiency income tax, in violation of Section 255, in relation to Section 253(d) and 256, of the 1997 NIRC, as amended.

In acquitting the accused, the Court ruled that since the FLD/FAN and FDDA are void, it follows that the legal obligation of the accused to pay the subject deficiency tax assessments did not arise. Hence the first element of the crime charged that the taxpayer is required to pay any tax is not present. And considering that the FLD/FAN and

FDDA are void, the accused cannot be said to have failed to pay the deficiency income tax (second element) much more to have done so willfully (third element) - as required under Section 255 of the NIRC of 1997, as amended.

In this case, the FLD/FAN failed to fix the amount of income tax liability. The FDDA also failed to state the facts and applicable law, rules, and regulations, or jurisprudence on which the final decision is based. Further, the prosecution failed to prove that the FDDA was actually received by the accused. (*People of the Philippines vs. Cross Country Oil & Petroleum, Corp., et.al., CTA Crim. Case No. O-620, May 19, 2021*)

## BIR Issuances

**RR No. 7-2021, May 18, 2021 -This provides for the Rules and Regulations Implementing the Provisions of Republic Act Nos. 11346 and 11467 on Excise Tax on Alcohol, Tobacco, Heated Tobacco, and Vapor Products and Disposition of Excise Tax Collection.**

This Revenue Regulation (“RR”) is promulgated to implement the amendment of excise tax on alcohol and tobacco products, and the imposition of excise tax on heated tobacco products and vapor products as provided in Republic Act (“RA”) No. 11346 and RA No. 11467.

### Definition of terms

1. **Distilled Spirits** – shall refer to the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications, and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin, and vodka, and other similar products or mixtures.
2. **Fermented Liquors** – such as beer, lager beer, ale, porter, and other fermented liquors regardless if manufactured in factories or sold and brewed at micro-breweries or small establishments such as pubs and restaurants, except tuba, basi, tapuy, and similar fermented liquors.
3. **Heated Tobacco Products** – shall refer to tobacco products that may be consumed through heating tobacco, either electrically or through other means sufficiently to release an aerosol that can be inhaled, without burning or any combustion of the tobacco. Heated tobacco products include liquid solutions and gels that are part of the product and are heated to generate an aerosol.
4. **Vapor Products** – mean Electronic Nicotine and Non-Nicotine Delivery Systems (ENDS/ENNDS), which are combinations of (i) a liquid solution or gel, that transforms into aerosol without combustion through the employment of a mechanical or electronic heating element, battery, or circuit that can be used to heat such solution or gel, and includes, but is not limited to (ii) cartridge, (iii) a tank, and (iv) the device without a cartridge or tank. It is commonly known as nicotine salt/salt nicotine, and conventional ‘freebase’ or ‘classic’ nicotine, and other similar products. All vapor products shall be covered regardless of their nicotine content.
5. **Cigarettes** – shall mean all rolls of finely-cut leaf tobacco, or any substitute, therefore, wrapped in paper or in any other material that is consumed via combustion of the tobacco.
6. **Cigars** – shall mean all rolls of tobacco or any substitute thereof, wrapped in leaf tobacco that is consumed via combustion of the tobacco.
7. **Cigarettes Packed by Hand** – shall refer to the manner of packaging of cigarette sticks using an individual person's hands and not through any other means such as a mechanical device or equipment.

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*Revised Rates and Bases of Excise Tax*

1. Distilled Spirits

<b>Excise Tax Due = Ad valorem tax + Specific tax</b>		
<b>Date of effectivity (Start Date)</b>	<b>Ad valorem tax [based on the net retail price per proof (excluding the excise and value-added taxes)]</b>	<b>Specific tax (Per proof liter)</b>
January 1, 2020	20%	P24.34
January 23, 2020	22%	P42.00
January 1, 2021	22%	P47.00
January 1, 2022	22%	P52.00
January 1, 2023	22%	P59.00
January 1, 2024	22%	P66.00
2025 Onwards	22%	specific tax rate shall be increased by 6% and every year thereafter

2. Fermented Liquors

<b>Date of effectivity (start date)</b>	<b>Specific tax (per liter)</b>
January 1, 2020	P26.43
January 23, 2020	P35.00
January 1, 2021	P37.00
January 1, 2022	P39.00
January 1, 2023	P41.00
January 1, 2024	P43.00
2025 Onwards	specific tax rate shall be increased by 6% and every year thereafter

3. Heated Tobacco Products

<b>Date of Effectivity</b>	<b>Quantity</b>	<b>Excise Tax Rate</b>
January 1, 2020	Per pack of 20 units or any packaging combinations of not more than twenty (20) units	P10.00
January 23, 2020		P25.00
January 1, 2021		P27.50
January 1, 2022		P30.00
January 1, 2023		P32.50
2024 Onwards		the specific tax rate shall be increased by 5% and every year effective January 1, 2024

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#### 4. Vapor Products

Date of Effectivity	Quantity	Excise Tax Rate
January 1, 2022 to January 22, 2020	0.00 ml to 10.00 ml	P10.00
	10.01 ml to 20.00 ml	P20.00
	20.01 ml to 30.00 ml	P30.00
	30.01 ml to 40.00 ml	P40.00
	40.01 ml to 50.00 ml	P50.00
	More than 50.00 ml	P50.00 plus P1.00 for every additional 10.00 ml

##### a) Nicotine Salt or Salt Nicotine

Date of Effectivity	Quantity	Excise Tax Rate
January 23, 2020	Per millilitre or a fraction thereof	P37.00
January 1, 2021		P42.00
January 1, 2022		P47.00
January 1, 2023		P52.00
2024 Onwards		Rate shall be increased by 5% every year effective January 1, 2024

##### b) Conventional 'Freebase' or 'Classic' Nicotine

Date of Effectivity	Quantity	Excise Tax Rate
January 23, 2020	Per ten (10) millilitre or a fraction thereof	P45.00
January 1, 2021		P50.00
January 1, 2022		P55.00
January 1, 2023		P60.00
2024 Onwards		Rate shall be increased by 5% every year effective January 1, 2024

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## 5. Cigars and Cigarettes

### a) Cigars [Excise tax = ad valorem tax plus (+) specific tax]

Date of effectivity	Ad valorem tax Rate is based on the net retail price per cigar (excluding the excise and value- added taxes)	Add: Specific tax
January 1, 2020	20%	P6.57
January 1, 2021	20%	P6.83
January 1, 2022	20%	P7.10
January 1, 2023	20%	P7.38
2024 Onwards	20%	Rate shall be increased by 5% every year effective January 1, 2024

### b) Cigarettes packed by Machine

Date of effectivity	Quantity	Excise Tax Rate
January 1, 2020	Per pack of 20s or any packaging combinations of not more than 20 packed by hands	P45.00
January 1, 2021		P50.00
January 1, 2022		P55.00
January 1, 2023		P60.00
2024 Onwards		Rate shall be increased by 5% every year effective January 1, 2024

### Labels and Packages

No stamp taxes shall be affixed on non-compliant packages and the taxpayer shall certify under oath that the products withdrawn are compliant with the Graphic Health Warnings Law and the templates approved and issued by the DOH, as well as under existing revenue issuances.

### Export and Transport Bond

No tobacco products, heated tobacco products, or vapor products manufactured in the Philippines and produced for export shall be removed from their place of manufacture or exported without posting of an export bond equivalent to the amount of the excise tax due thereof if sold domestically. However, tobacco products, heated tobacco products, or vapor products for export may be transferred from the place of manufacture to a bonded facility, upon posting of a transfer bond, prior to export.

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## Transshipment

Tobacco products, heated tobacco products, or vapor products imported into the Philippines and destined for foreign countries shall not be allowed entry without posting a bond equivalent to the amount of customs duty, excise, and value-added taxes due thereon if sold domestically.

## Willful Understatement of Suggested Net Retail Price

The understatement of the suggested net retail price by as much as fifteen percent (15%) of the actual net retail price as determined using the survey price net of excise and value-added taxes declared per manufacturer/importer's sworn statement, shall render the manufacturer or importer of covered products per RA No. 11346 and 11467 liable for additional excise and value-added taxes 'equivalent to the difference between the recomputed (excise and value-added) taxes based on the annual net retail price and the declared excise and value-added taxes per submitted sworn statement.

## Statutory Offenses and Penalties

- A. **Unlawful Possession of Cigarette Paper in Bobbins or Rolls, etc.** – Punishable by a fine of not less than One Million Five Hundred Thousand pesos (P5,000,000.00) but not more than Fifteen Million pesos (P15,000,000.00) and imprisonment for a term of not less than six (6) years and one (1) day but not more than twelve (12) years.
- B. **Violation of Section 164 of the NIRC, as amended** – Punishable with a fine of not less than Fifteen Million pesos (P15,000,000.00) but not more than Fifty Million pesos (P50,000,000.00) and imprisonment of not less than twelve (12) years but not more than twenty (20) years.
- C. **Selling of Tobacco Products at a Price Lower than the Combined Excise and VAT** – Punishable with a fine of not less than ten (10) times the amount of excise tax plus value-added tax due but not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (P500,000.00), and imprisonment of not less than four (4) years but not more than six (6) Years.
- D. **Shipment or Removal of Liquor or Tobacco Products under False Name or Brand or as an Imitation of any Existing or Otherwise Known Product Name or Brand Relative to RA No. 11346** – Punishable by a fine of not less than One Million Five Hundred Thousand pesos (P500,000.00) but not more than Fifteen Million pesos (P15,000,000.00) and imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years.
- E. **Unlawful Possession or Removal of Articles Subject to Excise Tax Without Payment of the Tax** – Penalty depends on the appraised value to be determined in the manner prescribed in Customs Modernization and Tariff Act.

## **RMC No. 62-2021, May 17, 2021**

**This provides for Clarifications in relation to Certain Provisions of RR No. 5-2021 Relative to Corporate Income Taxation.**

This RMC clarifies certain provisions of RR No. 5-2021, the RR implementing the income tax provisions under Republic Act No. 11534, otherwise known as Corporate Recovery and Tax Incentives for Enterprises Act (CREATE).

**Q1:** One of the conditions that must be satisfied to qualify for the reduced corporate income tax rate of twenty percent (20%) is that the total assets should not be more than P100,000,000, exclusive of land. Are the total assets net of depreciation and allowance for bad debts, if any?

**A1:** Yes, total assets shall be net of depreciation and allowance for bad debts, if any. Further, the land where the business entity's office, plant and equipment are situated is excluded in computing for the total assets.

**Q2:** In relation to the preceding question, what shall be excluded? Is it the acquisition cost or the fair market value of the land?

**A2:** If the cost of acquisition of the land is reflected in the Financial Statements (FS), that cost shall be excluded in determining the total assets. But if the land is reflected in the FS at its fair market value (FMV), such FMV shall be excluded in the computation of the total assets, for purposes of determining if the corporation is qualified to the reduced corporate income tax rate of twenty percent (20%).

**Q3:** Is the cost/value of all the land used in business excluded in determining the total assets of the corporation for purposes of qualification to the reduced corporate income tax rate of Twenty percent (20%)?

**A3:** No, the value of the land which shall be excluded is limited to that particular land where the business entity's office, plant, and equipment are situated during the taxable year for which the twenty percent (20%) income tax is imposed. Thus, if the land is being held primarily for sale to customers or land held for investment purposes, the value of these types of land should not be excluded in the determination of the business entity's total assets.

**Q4:** How to determine the value of the land that shall be excluded in computing for the total assets if only a portion of the floor area of the building is devoted to the entity's office and the rest of the usable floor area is on a lease?

**A4:** In order to determine the value of the land that shall be excluded in the computation of total assets, the percentage of the floor area devoted to the entity's office shall be multiplied by the total value of the land. For example, the building has an area of 5,000 square meters, where 1,000 square meters pertain to the entity's office, while the 4,000 square meters are rented out. If the value of the land is Php 10,000,000.00, the value to be excluded in the computation of total assets shall be Php 2,000,000.00. To further illustrate:  $1,000/5,000$  square meters x Php 10,000,000.00 = Php 2,000,000.00.

**Q5:** If the taxpayer's business is banana plantation or leasing of land, will the value/cost of these lands be excluded for purposes of determining the total assets?

**A5:** No, as discussed in Item 43, the value of the land which shall be excluded is limited to that particular land where the business entity's office, plant, and equipment are situated during the taxable year for which the twenty percent (20%) income tax is imposed. Thus, the value of the land being used as a banana plantation or being leased should NOT be excluded in the determination of the total assets for purposes of qualification to the 20% corporate income tax.

**Q6:** Are private educational institutions distributing dividends to shareholders taxable at the regular corporate income tax rates of either twenty-five (25%) or twenty percent (20%)?

**A6:** Yes, because the law is very specific that the preferential rate of Ten Percent (10%) or One Percent (1%) starting from July 1, 2020 to June 30, 2023, shall be imposed to proprietary Educational Institution, which is defined as "any private schools which are non-profit, maintained and administered by private individuals or groups, with an issued permit to operate from Department of Education (DepEd) or Commission on Higher Education (CHED) or Technical Education and Skills Development Authority (TESDA), as the case may be, under existing regulation.

**Q7:** Did the CREATE law prescribe a new tax treatment for proprietary educational institutions and private hospitals?

**A7:** No, the CREATE law did not prescribe new tax treatment for proprietary educational institutions and private hospitals since it is already provided in the Tax Code of 1997, as amended. The CREATE Act merely reduced the tax rate, from 10% to 1%, effective July 1, 2020 to June 30, 2023 for such institutions which are non-profit.

**Q8:** Section 5 of RR No. 5-2021 states that "if the Certification shall state non-utilization of the dividends received, the corresponding tax due on the unutilized dividends shall be declared as taxable income, subject to interest, surcharges, and penalties, if any". Please clarify what should be declared as "taxable income".

**A8:** The taxable income shall be the unutilized dividends. The provision on RR No. 5-2021 regarding unutilized dividends should be read as "if the Certification shall state non-utilization of the dividends received, the unutilized dividends shall be declared as taxable income, and the corresponding tax due shall be subject to interest, surcharges, and penalties".

**Q9:** What shall be the tax treatment for dividends received by a domestic corporation from a resident foreign corporation (RFC)?

**A9:** The tax treatment of dividends received by a domestic corporation from RFC will depend on the sources of income of the RFC. Under Section 42(A)(2)(b) of the Tax Code, as amended, "dividend received from a foreign corporation shall be treated as income derived from sources within the Philippines; unless less than fifty percent (50%) of the gross income of the foreign corporation for a three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of the period as the corporation has been in existence) was derived from sources within the Philippines xxx xxx".

**Q10:** Illustration under Section 9.8 on the Transitory Provisions of RR No. 5-2021 states that the transactions of MVAA Corporation pertain to its fourth year of business operation, hence, MCIT was computed. What was the reckoning date of determining that it is the corporation's fourth year of operation?

**A10:** The phrase "4th year of business operations" in the illustration should be construed to mean fourth taxable year immediately following the year in which such corporation commenced its business operation" as indicated under Section 3 of RR No. 5-2021 on MCIT. Thus, if the corporation commenced its business operations in 2017, MCIT may be imposed beginning the year 2021, if it exceeds the regular income tax. The taxable year in which business operations commenced shall be the year in which the corporation is registered with the BIR, as provided under RR No. 9-98.

**Q11:** Is the additional allowable deduction equivalent to one-half of the actual training expenses applicable only to entities engaged in manufacturing and that such actual training expenses exclude those which pertain to employees under supervisory, managerial, administrative, and support functions?

**A11:** The law provides no distinction as to which type of industry can claim the additional allowable deduction of one-half (112) of the value of labor training expenses. There are, however, requirements that must be complied with before this deduction can be claimed. These are:

- a) The labor training expenses shall not be more than ten percent (10%) of the Direct;
- b) The labor training expenses are incurred for skills development of enterprise-based trainees;
- c) The enterprise-based trainees are enrolled in public senior high school, public higher education institutions, or public technical and vocational institutions for the taxable year in which the labor training expenses are claimed; and
- d) The Company claiming the additional deduction is granted an authority to offer a training program for skills development as certified by the Department of Education (DepED), Technical Education and Skills Development Authority (TESDA), or Commission on Higher Education (CHED), as applicable.

**RMC 64-2021, May 21, 2021 - This expands the Electronic Tax Software Provider Certification System.**

This RMC provides for the expansion of the Electronic Tax Software Provider Certification System, to promote taxpayer compliance and keep pace with the shift of tax administration globally to digital tax services. As such, the BIR introduced the Electronic Tax Software provider certification system ("eTSPCert System") through RMO No. 8-2019 allowing Tax Software Providers ("TSPs,") to register and to have their tax return filing and/or payment solutions tested and certified. The implementation of the eTSPCert System aims to provide faster, more reliable, and convenient services to the taxpaying public through continuous introduction of enhancements to business processes by utilizing innovations in information technology (IT) to automate key tax services and functions.

The BIR recognizes the role of TSPs in driving technological innovation as we transition to a digital economy. The BIR promotes the TSP-led development of innovative taxpayer solutions that leverages the latest technological innovations to complement BIR's own investment in modernizing its information systems. In line with this, the BIR is expanding the scope of TSPs to include other electronic or online services such as online taxpayer registration, online tax clearance processing, online application and processing of certificate authorizing registration for real property transactions, and electronic invoicing/receipting, among others. This policy is in line with the digital transformation drive of the BIR which aims to make taxpayer services convenient, reliable, and transparent and improve ease of doing business. The BIR shall issue separate policies, guidelines, and procedures for each electronic service which shall contain TSP accreditation requirements and testing and certification processes.

**RMC 65-2021, May 24, 2021 - This provides for the Guidelines in the Filing of Quarterly Percentage Tax Return (BIR Form No. 2551Q).**

This RMC provides for the Guidelines in the Filing of Quarterly Percentage Tax Return (BIR Form No. 2551Q) starting on the Quarter Ending July 31, 2020 to June 30, 2023, pursuant to the passing of CREATE.

In view of the foregoing, taxpayers who are going to amend their filed quarterly returns to reflect the excess percentage tax payment made and to be carried forward to the succeeding taxable quarter/s shall follow these:

**1. Manual and eBIRForms Filers/Users**

BIR Form	Line Item and Description	Remarks
2551Q January 2018 (ENCS)	Line 17 - Other Tax Credit/Payment	Specify in the space provided the 'Carry-Over Excess Percentage Tax (PT) Paid from Previous Quarters'

**2. eFPS Filers/Users**

BIR Form	Line Item and Description	Remarks
2551 February 2002 (ENCS)	20A Creditable Percentage Tax Withheld per BIR Form No. 2307	Where the amount of the Carry Over Excess Percentage Tax Paid from Previous Quarter/s will be reflected

To validate the return in eFPS and eBIRForms, the filer shall mark the option **"To be issued a Tax Credit Certificate"** which is presumed that the taxpayer **will carry over the overpaid tax to the succeeding taxable quarter/s** once the said option was chosen. For manual filer, neither of the options **"To be Refunded"** or **"To be Issued a**

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Tax Credit Certificate" shall be marked in the said tax return but rather write the phrase "To be Carried Over" on the return. The same procedure shall be undertaken, whether the return was filed manually or electronically, by the taxpayer subject to percentage tax until the overpaid amount has been fully utilized.

**RMC No. 66-2021, May 24, 2021 - This is to inform the availability of BIR Form No. 1702Q January 2018 (ENCS) in the eFPS and 1702Qv2008C in the eBIRForms.**

This RMC is issued to disseminate the availability of the following versions of BIR Form No. 1702Q, to wit:

**1. BIR Form No. 1702Q January 2018 (ENCS)**

This form is already available in eFPS and the reduced rates pursuant to CREATE Act are already included/updated. The taxpayer shall select the Alphanumeric Tax Code (ATC) with the corresponding tax rate to be used. Non-individual eFPS users shall file and pay their quarterly income tax return [BIR Form No. 1702Q January 2018 (ENCS) using eFPS Facility.

**2. BIR Form No. 1702Qv2008C**

The January 2018 version of the form is not yet available in the Offline eBIRForms Package. Instead, the 2008 version has been modified as follows:

Item/Field No.	Description	Remarks
25B	Tax Rate (except MCIT Rate)	Fields/Items are editable and enterable
Schedule 1	Tax Rate (in row 2)	

The above-mentioned version of the form is already available in the Offline eBIRForms Package v7.9.1 and the new package is downloadable from the following:

- [www.bir.gov.ph](http://www.bir.gov.ph) and
- [www.knowyourtaxes.ph](http://www.knowyourtaxes.ph)

Non-individual eBIRForms users shall file their quarterly income tax return by using the BIR Form No. 1702Qv2008C in the Offline eBIRForms Package v7 .9.1. Payment of the tax due thereon, if any, shall be made thru:

**a) Manual Payment**

- AAB within the jurisdiction of the LTS/RDO where the taxpayer is registered; or
- If no AAB, with the concerned Revenue Collection Officer under the jurisdiction of the RDO where the taxpayer is registered.

**b) Online Payment**

- Mobile payment (Gcash/Paymaya); or
- LBP Link.BizPortal for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card; or

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- 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
- PESONet through LBP Link.BizPortal

**RMC 67-2021, May 21, 2021 - This clarifies Issues Relative to the Temporary Reduction of Percentage Tax Rate Imposed under Section 116 of the NIRC, as amended by CREATE.**

This RMC provides for clarification relative to the amendments made to Percentage Tax pursuant to 13 of R.A. No. 11534, otherwise known as the CREATE, as implemented by Revenue Regulations (RR) No. 4-2021.

**Q1:** The amendments to the Tax Code under the CREATE were intended for corporations. Was the decrease of the Percentage Tax rate from three percent (3%) to one percent (1%) effective July 1, 2020 until June 30, 2023 pursuant to Section 13 of R.A. No. 11534 intended for corporate taxpayers only?

**A1:** No. Sec. 116 of the Tax Code, applies to both corporate taxpayers and self-employed individuals and professionals whose gross sales or gross receipts are not exceeding the three million pesos (P3,000,000.00) threshold, except for cooperatives and self-employed individuals and professionals availing the 8% income tax rate.

**Q2:** Does the 1% percentage tax rate refer to those covered by Sec. 109(1)(CC) only or as a whole, meaning, those under Sec. 116 of the Tax Code?

**A2:** Yes. The coverage is as a whole under Section 116 of the Tax Code, which 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 be subject to percentage tax provided, that the taxpayer did not opt to be VAT-registered even if the P3,000,000.00 threshold was not breached.

**Q3:** Are non-VAT-Registered taxpayers required to amend their Percentage Tax returns BIR Form No. 2551Q for the third (3rd) and fourth (4th) quarters of 2020 up to the effectivity of RR No. 4-2021 by using the 1% rate?

**A3:** Yes. Taxpayers who filed their 3rd and 4th quarter Percentage Tax returns for 2020 and those who may have filed their 1st quarter percentage tax returns for 2021 using the 3% rate are required to amend their duly filed Percentage Tax returns using the 1% rate to reflect the overpaid taxes.

**Q4:** If the taxpayer will carry over the overpaid percentage taxes for the succeeding period/s, will amending the return be subjected to penalty for every amended return?

**A4:** No. Amendment of the Percentage Tax returns is not subject to penalty for affected taxpayers which/who will carry over the overpaid percentage taxes.

**Q5:** Pursuant to the "Transitory Provisions" of RR No. 4-2021, excess Percentage Tax payments as a result of the decrease of the tax rate from 3% to 1% starting July 1, 2020 until the effectivity of the said Regulations may be carried forward to the succeeding taxable quarter/s by reflecting the excess percentage tax payment under Line 17 of the Quarterly Percentage Tax Return (BIR Form No. 2551Q), does this mean that the taxpayer is already precluded from claiming a tax refund for the overpayment?

**A5:** Yes. The carry-over is intended for Percentage Taxpayers who are regularly filing the returns and are expected to have overpaid taxes as a result of the retroactive application of CREATE starting July 1, 2020. The transitory provisions in RR No. 4-2021 allow flexibility to affected taxpayers by allowing them to carry over the overpaid taxes in order for taxpayers to utilize the overpaid amount against future percentage tax liabilities.

**Q6:** Under what instances are percentage taxpayers allowed for a refund?

**A6:** Percentage taxpayers who have overpaid taxes as a result of the decrease of the tax rate from 3% to 1% starting July 1, 2020 until the effectivity of RR No. 4-2021 are allowed for a tax refund in the event that:

- The taxpayer shifted from non-VAT to VAT-registered status; or
- The taxpayer has opted to avail of the eight percent (8%) income tax rate at the beginning of TY 2021.

**Q7:** For lack of an option to carry over the overpaid amount in BIR Form No. 25 51Q what should the percentage taxpayer do to indicate the said option?

**A7:** Please note that in the current Percentage Tax Return (BIR Form No. 2551Q), the only option reflected in the said form is for refund or issuance of a tax credit certificate (TCC). The percentage taxpayer who shall carry over the overpaid amount should observe the following guidelines:

- The taxpayer shifted from non-VAT to VAT-registered status; or
- The taxpayer has opted to avail of the eight percent (8%) income tax rate at the beginning of TY 2021.

**Q8:** For lack of an option to carry over the overpaid amount in BIR Form No. 25 51Q what should the percentage taxpayer do to indicate the said option?

**A8:** Please note that in the current Percentage Tax Return (BIR Form No. 2551Q), the only option reflected in the said form is for refund or issuance of a tax credit certificate (TCC). The percentage taxpayer who shall carry over the overpaid amount should observe the following guidelines:

- a. For taxpayers filing BIR Form No. 2551Q manually, neither of the options "To be Refunded" or "To be Issued a Tax Credit Certificate" shall be marked in the said tax return but rather write the phrase "To be Carried Over" on the return; or
- b. For eFPS and eBIRForms filers, the option "To be Issued Tax Credit Certificate" shall be marked as a workaround procedure to proceed with the electronic filing. For purposes of the transitory provisions in Section 3 of RR No. 4-2021, it is presumed that the taxpayer will carry over the overpaid tax to the succeeding taxable quarter once the said option was chosen. However, if the taxpayer is intent on having the overpaid tax to be refunded or issued with TCC for any of the reasons stated in Q&A No. 6, the BIR shall be informed thru BIR Form No. I914 or the "Application for Tax Credits/Refunds" by indicating therein that it shall be in the form of refund or TCC.

The same procedure shall be undertaken, whether the return was filed manually or electronically, by the percentage taxpayer until the overpaid amount has been fully utilized.

**Q9:** In case the taxpayer has marked or has inadvertently marked either of the options for tax refund or TCC but opts to carry over the overpayment instead, will this be allowed?

**A9:** Yes. If the percentage taxpayer will carry over the overpayment but has inadvertently marked either tax refund or issuance of TCC on the return, the BIR will presume that the overpaid amount will be carried over.

**Q10:** In case a percentage taxpayer carried over the alleged overpayment without amending the affected Percentage Tax returns to any quarter/s staging 2021, will the carried over percentage tax be disallowed?

**A10:** Yes. The amended Percentage Tax returns showing the overpayment shall be the basis for the carryover.

**Q11:** How will the overpayment of percentage taxes be recovered by individuals under a job order or a service contract agreement with the departments and agencies of the government, its instrumentalities, local government units (LGUs), state universities, and colleges (SUCs), including government-owned and/or -controlled corporations (GOCCs) and government Financial Institutions (GFIs)?

**Q11:** The withholding agent/government agency shall be responsible for refunding the overpaid taxes of Individuals under the Job Order or Service Contract Agreement, who availed of substituted filing on Percentage Tax pursuant to RMC No. 51-2018. Individual contractors claiming for the refund shall issue an authorization

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and shall surrender the certificates of withholding of percentage taxes (BIR 2306) with the withholding agent/government agency. The withholding agent/government agency shall carry over the over-remitted taxes to the next succeeding quarter/s in accordance with Section 3 of RR No. 4-2021, attaching thereto the authorization and the certificate (BIR 2306) from the payee.

**Q12:** Are the government, its instrumentalities, LGUs, SUCs, including GOCCs, and GFIs also required to amend the tax returns filed including the Alphalists if they will refund the overpaid taxes?

**A12:** yes. The government, its instrumentalities, LGUs, SUCs, including GOCCs, and GFIs shall amend previously filed returns including the respective Alphalists if any, but the reduction or resulting overpayment shall only be to the extent of the amount to be refunded.

**Q13:** Are the existing revenue issuances pertaining to percentage taxes prior to CREATE automatically repealed?

**A13:** Yes. Under the CREATE, only the rate was reduced for percentage tax imposed in Sec. 116 of the Tax Code from 3% to 1% effective July 1, 2020 until June 30, 2023. Consistent with the repealing clause of Section 4 of RR No. 4-2021, previous issuances where the 3/o percentage tax was mentioned were deemed modified and reduced to 1%.

**Q14:** For government money payments, please clarify the taxes that need to be withheld on purchases of goods or services from suppliers.

**A14:** It is to be emphasized that there are two (2) types of withholding taxes involving government money payments pursuant to the provisions of RR No. 2-98, as amended, summarized as follows:

- a) Income Tax - in the form of creditable withholding taxes with the rates depending on the nature of the transaction as required under existing issuances; and
- b) Sales Tax - in the form of 5% creditable withholding VAT if the supplier is VAT-registered or 10/o percentage tax if the supplier is subject to percentage tax under Section 116 of the Tax Code, or any other applicable rate depending on the transaction as prescribed under existing issuances.

**Q15:** Will the overpaid percentage tax be allowed as carryover or may be applied for refund/TCC if the percentage taxpayer has already claimed the same as a deduction part of the taxes and licenses in the Annual Income Tax Return for the taxable year 2020?

**A15:** No. If the whole amount of 3% percentage tax has been claimed as a deductible expense for purposes of computing the income tax due, the taxpayer can no longer be allowed as carryover or apply for tax refund/TCC the alleged overpaid percentage tax.

**Q16:** In order to qualify for the carry-over or refund of the overpaid percentage taxes, will the Annual Income Tax Return (ITR) for TY 2020 for taxpayers under the calendar year period or quarterly ITR for Fiscal year, together with the Audited Financial Statements (AFS), if any, also be amended if a return has been filed reflecting the 3% percentage taxes paid?

**A16:** Only the ITR/s filed are needed to be amended without necessarily amending the corresponding AFS. However, if the AFS will not be amended, the overpaid percentage tax shall be reflected as a reconciling item in the amended ITR/s.

### **RMC No. 68-2021, May 28, 2021**

**This provides Guidelines in the Filing of BIR Form No. 1702Q January 2018 (ENCS) in the eFPS by Taxpayers with Fiscal Year Accounting Period.**

Due to complaints received from eFPS with fiscal year accounting period citing they cannot proceed in the filing of 1702Q, they are advised to do the following:

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## 1. File the BIR Form No. 1702Q using Offline eBIRForms Package v7.9.1

The January 2018 version of the form is not yet available in the Offline eBIRForms Package. Instead BIR Form No. 1702Qv2008C shall be used.

## 2. Pay the taxes due thereon, if any, thru eFPS

After submitting the return through eBIRForms, eFPS filers shall proceed to payment using eFPS Facility. They shall fill out and e-File BIR Form No. 0605 then proceed to e-Payment to pay their income tax due using the codes Income Tax (IT) and ATC - MC 200 Miscellaneous Tax.

# SEC Issuances

### **SEC-OGC Opinion No. 21-04 dated March 30, 2021 - This is a legal opinion regarding quorum in by-laws.**

A non-stock, non-profit, condominium corporation intends to amend its By-law provisions on quorum in a members' meeting. The issue is whether the By-laws of a company can provide therein and require a quorum for members' meeting the presence of members in good standing representing at least thirty percent (30%) of the relevant number of units entitled to be represented and vote.

The Commission answered in the affirmative citing Section 51 of the Revised Corporation Code (RCC), has opined that any corporation, whether stock or non-stock, is authorized to provide in its by-laws a specific number of stockholders or members necessary to constitute a quorum for the transaction of corporate business, except in those instances where the Corporation Code or applicable special law explicitly prescribes the proportion of stockholders or members necessary to resolve or carry out a particular corporate proposal.

### **SEC-OGC Opinion No. 21-05 dated May 7, 2021 -**

**This is a legal opinion regarding the increase of authorized capital stock and registration of shares of stock to be issued, therefore.**

The corporation has approved the increase of its authorized capital stock and its existing shareholders may exercise their pre-emptive rights. The issue is whether the additional shares of stock that may be issued as a consequence of the increase in the authorized capital stock of the corporation which is subject to the stockholder's pre-emptive rights need to be registered considering that the same will be offered only to the existing stockholders and not to the public.

As a general rule, securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC. However, the SRC provides for certain exemptions accorded to selected classes of securities where the registration requirement is not made applicable. In addition, the IRR of the SRC provides for other exempt securities. Considering that the shares of stock to be issued by the corporation to stockholders exercising their pre-emptive right are not among the securities enumerated under Section 9 of the SRC and Rule 9.1 of the SRC-IRR, they are not exempt securities. Sections 10 (e) and (i) of the SRC which covers the sale of unissued shares and sales from the increase in the authorized capital stock, respectively, of a corporation provides for exempt transactions where the requirement for registration also does not apply. The exemptions provided under Section 10.1 (e) and (i) cannot be availed if a

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commission or fee is paid, directly or indirectly, in connection with the sale of such capital stock, or the corporation incurs an expense in the sale or disposition of such securities. In such a case, the sale will have to be registered with the Commission.

Applying the afore-quoted provisions, and in the absence of any showing that the corporation has incurred or will incur expenses in connection with its sale of the capital stocks pursuant to an increase in its authorized capital stock exclusively to its shareholders, such sale is an exempt transaction that does not require to be registered with the Commission.

## BSP Issuances

**BSP Circular No. 1117, May 27, 2021 -**

**This amends Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBF) to implement Republic Act (RA) No. 11523, otherwise known as the “Financial Institutions Strategic Transfer (FIST) Act”**

The Monetary Board approved the amendments to the MORB and MORNBF to implement RA No. 11523 and its Implementing Rules and Regulations (IRR) for BSP-Supervised Financial Institutions (BSFIs), as follows:

- Section 1. Sale/Transfer and investment transactions of BSFIs pursuant to the FIST Act and its IRR. The following provisions shall be added under Section 386 of the MORB and Sections 363-Q/307-N of the MORNBF:
  - ✓ Policy Statement
  - ✓ Definition of Terms
  - ✓ Issuance of Certificate of Eligibilities
  - ✓ Notice, Manner, and Nature of Sale/Transfer of NPAs
  - ✓ Investment Transactions of a BSFI
  - ✓ Prudential Relief Measures on the Sale/Transfer of NPAs
  - ✓ Limitations on Amount Available for Dividends
  - ✓ Prudential Report
  - ✓ Penalties and Administrative Sanctions
  
- Section 2. Applicability to other non-bank financial institutions (NBFIs). Section 1 of this Circular shall be adopted under Sections 311-S/130-322-P of the MORNBF with the following changes:
  - ✓ The provisions on “Investment Transactions of a BSFI” shall not apply to credit card issuers, non-stock savings, and loan associations, and pawnshops.
  - ✓ The definition of NPL under "Definition of Terms" shall be adopted with some changes under Section 322-P of the MORNBF.
  - ✓ Additional provisions shall be included under Item "a. Prior Notice" of Section 322-P of the MORNBF.

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- ✓ The provisions under Item "b. Sole/Transfer of Assets" of "Notice, Manner, and Nature of Sale/Transfer of NPAs" shall be adopted under Sections 311-S/322-P/130-CC of the MORNBFBI with modifications.
  - ✓ Additional provisions shall be included under Item "b. Sale/Transfer of Assets" of "Notice, Manner, and Nature of Sale/Transfer of NPAs" of Section 322-P of the MORNBFBI.
  - ✓ The provisions on the prudential report shall be adopted under Sections 311-sR22-P of the MORNBFBI with modifications.
  - ✓ The provisions on the prudential report shall be adopted under Section 130-CC of the MORNBFBI with modifications.
  - ✓ The provisions on penalties and administrative sanctions shall be adopted under sections 311-S/130-CC/322-P of the MORNBFBI with modifications.
- Section 3. Template of the Monthly Report on the Sale/Transfer and Investment Transactions of BSFIs under the FIST Act. Appendix 7 of the MORB, as well as Appendix Q-3/P-7/N-1/S-2 of the MORNBFBI are amended to include the Monthly Report on the Sale/Transfer and Investment Transactions of BSFIs under the FIST Act.

**BSP CL-2021-037, May 10, 2021 -  
This provides advisory on Electronic Sabong (eSabong)**

eSabong is defined as the online/remote or off-site wagering/betting on live cockfighting matches, events, and/or activities streamed or broadcasted live from cockpit arena/s licensed or authorized by the LGUs having jurisdiction thereof. It is regulated by PAGCOR pursuant to its Charter.

Key features of the framework are:

- a. Operating licensing process and requirements;
- b. Platform requirements and standards;
- c. Know Your Customer, Verification, and Monitoring of players;
- d. Account Funding and Withdrawal through AMLC-compliant channels;
- e. Prohibition for offshore bets and streaming;
- f. Registration process for agents, coordinators, promoters;
- g. Reporting obligations; and
- h. Compliance with all Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Laws, Rules and Regulations issuances of the Anti-Money Laundering Council, PAGCOR, and other relevant government agencies.

**BSP CL-2021-041, May 20, 2021 -  
This provides Anti-Money Laundering Council (AMLC) Resolutions No. TF-39 and TF-40 to issue Sanctions Freeze Order (SFO) to take effect immediately against certain identified individuals affiliated with local terrorist groups.**

The AMLC Resolutions No. TF-39 and TF-40 direct all covered persons to:

1. Freeze without delay the following property or funds, including related accounts:
  - a. Property or funds that are owned or controlled by the subjects of designation, and are not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat;

**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.

- b. Property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the subject of designation;
  - c. Property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subject of designation; and
  - d. Property or funds of persons and entities acting on behalf or at the direction of the subject of designation.
2. Submit to the AMLC:
- a. Written return, pursuant to and containing the details required under Rule 16.c of the IRR of RA 10168; and
  - b. Suspicious transaction report on all previous transactions of the subjects of designation within 5 days from the effectivity of the SFO.

**BSP M-2021-029, May 7, 2021 -**

**This provides enhancements to the BSP Operational Relief Measures**

The enhancements to the BSP Operational Relief Measures are as follows:

1. Deferment in the submission of the 2020 Annual Audited Financial Statements (AFS) of BSP-Supervised Financial Institutions (BSFIs) - The annual submission of the 2020 AFS of BSFIs is extended until June 30, 2021.
2. Relaxation of the notification requirements on changes in banking days and hours as well as the temporary closure of bank branches/branch-lite units and BSFI offices/service units.
3. Relief measure on customer identification.
4. Waiver of fees related to the grant of license or authority to provide Types A and B Advanced Electronic Payments and Financial Services (EPFS).
5. Waiver of BSP approval on requests for extension of the deadline to open approved bank branches/BLUs.

**BSP M-2021-030, May 3, 2021 -**

**This provides an extension of Temporary Measures implemented in the Bangko Sentral ng Pilipinas (BSP) Rediscounting Facilities.**

The Monetary Board approved the extension of the temporary measures implemented in the BSP's rediscounting facilities until July 31, 2021, subject to further extension as may be approved by the MB, as follows:

1. Reduction of the term spread on Peso rediscounting loans to zero, thereby equating the Peso rediscount rate to the BSP's Overnight (O/N) Lending Rate, regardless of maturity (i.e., 1 to 180 days);
2. Reduction of the term spread on rediscounting loans under the Exporters' Dollar and Yen Rediscount Facility (EDYRF), thereby reducing the applicable United States Dollar (USD) and Japanese Yen

(JPY) rediscount rates to the 90-day London Interbank Offered Rate, plus 200 basis points, regardless of maturity (i.e., 1 - 360 days); and

3. Acceptance for rediscounting with the BSP under the EDYRF of the USD- and JPY-denominated credit instruments related to enterprises allowed to operate during the enhanced community quarantine of Luzon, as provided in the Department of Trade and Industry Memorandum Circular No. 20-08, except for loans to banks and capital markets; *Provided, that*, these credits are booked under the regular banking unit of the rediscounting bank and are compliant with the requirements on Eligible papers and collaterals under Section 282 of the Manual of Regulations for Banks (MORB); *Provided, further* that the said USD- and JPY-denominated credits pertain only to those end-user borrowers operating during the enhanced communist quarantine.

**BSP M-2021-031, May 28, 2021 -  
This provides guidelines on Banks' Cash Agents**

A bank with cash agent operation shall observe the following:

1. Banking products and services are clearly stated that they are the products and services of the bank in all advertising and marketing materials, terms and conditions on the use of agents.
2. The bank shall provide a uniform affixed signage that should be noticeable and readable by the customers to be displayed conspicuously on the premises of the cash agent.
3. The bank shall publish on its website or on any other media platform, an updated list of its accredited cash agents, including their complete registered business name, contact number(s)/details, locations, and authorized activities/services.
4. The bank shall establish a mechanism for handling complaints on cash agent-related transactions including the committed turnaround time to respond to its clients.

**BSP M-2021-032, May 28, 2021  
This provides guidelines on Disclosure and Transparency of Remittance and Transfer Companies and their Remittance Sub-Agents.**

The said guidelines are as follows:

1. The RTC shall be responsible for ensuring its accountability to the customer for all acts and omissions of its RSAs on RTC-related products and services.
2. In all advertising and marketing materials, terms and conditions on the services, and other forms of communication, it must be clear to the customer that the products and services being offered by the accredited RSAs are products and services of the RTC.
3. The RTC shall provide a uniform affixed signage that should be noticeable and readable by the customers to be displayed conspicuously in the premises of the RTC offices including its RSAs.
4. The RTC shall publish on its website or on any other media platform, an updated list of its offices and accredited RSA, including their complete registered business name, contact number(s)/details, and respective location/address.



5. The RTC should establish a mechanism to escalate client complaints that are coursed through RSAs including the committed turnaround time to respond to its clients.

## IC Issuances

### **IC Circular Letter CL-2021-35 dated April 30, 2021**

**This provides the process for electronic submission of reportorial requirements on fire and motor car policies and bonds issued, sale of a vehicle acquired under total loss claim subrogation, and adjustment cases handled.**

This Circular aims to update, consolidate and supplement the guidelines and procedures reflected in the circular and advisories issued which require that the reportorial requirements be electronically submitted.

The Circular Letter shall apply to the following regulated entities on the submission of reports, to wit:

1. Non-life insurance companies
  - a. Reports on Bonds Issued in Favor of the Government required in CL No. 2015-04
  - b. Reports on Judicial Bonds Issued required in CL No.08-2000
  - c. Reports on Sale and Disposition of Vehicles Acquired Under Total Loss Claim Subrogation required in CL No. 22-2011
  - d. Annual Report on Fire and Motor Car Policies and Bonds Issued required in CL No. 2019-73
2. Adjustment companies
  - a. Quarterly Reports of Adjustment Cases required in IMC No. 4/93

The above-mentioned report submissions shall be encrypted and uploaded into the Rating Online Submission System (ROSS) using the URL <https://onlinesubmission.insurance.gov.ph/rating/login>.

The online submission system users for each report are required to register by submitting an application form together with the supporting documents to [rating@insurance.gov.ph](mailto:rating@insurance.gov.ph).

All the concerned regulated entities shall electronically submit the above-stated reports with cover letter in Portable Document Format (PDF) and with the electronic signature of the company's authorized officer. The report submission must be in an Excel file, whenever applicable.

### **IC Circular Letter CL-2021-36 dated May 11, 2021**

**This provides for the extension of the period for submission of the Annual Corporate Governance Report (ACGR).**

All Insurance Commission Regulated Companies shall submit their Annual Corporate Governance Report covering operations for the year 2020 on or before the extended deadline of 30 July 2021 without incurring any penalties for late compliance.

### **IC Circular Letter CL-2021-37 dated May 21, 2021**

**This provides the process for the online submission of the AML and CTF compliance questionnaire under Circular Letter No. 2020-08.**

All Insurance Commission Regulated Entities (ICREs) shall submit their duly accomplished and certified under oath AML and CTF Questionnaire online to [amld@insurance.gov.ph](mailto:amld@insurance.gov.ph) in an accessible Portable Document Format (PDF) together with all necessary supporting documents.

Late submission by ICREs of a duly accomplished and certified under oath AML and CTF Compliance Questionnaire to the IC shall be meted by the Commission with a penalty amounting to PhP5,000.00 per day of delay but in no case shall the total penalty exceed One Hundred Thousand Pesos (PhP100,000.00). Provided that such late submission has been made within thirty (30) days from the deadline. Otherwise, late submission beyond the deadline shall be deemed as non-submission which shall be meted by this Commission with a penalty amounting to PhP200,000.00.

**IC Ruling No. 2021-03 dated May 12, 2021**

**This ruling clarified whether a company's hiring of a Licensed Underwriter with retirable age and not an employee of the company, can be authorized by the Board to sign on behalf of the company and if the same can be deemed as compliance with Circular Letter No. 23-2009.**

The company seeks clarification whether a company's hiring of a Licensed Underwriter with retirable age and not an employee of the company, can be authorized by the Board to sign on behalf of the company and if the same can be deemed as compliance with Circular Letter No. 23-2009.

Circular Letter No. 23-2009 provides that the following individuals may sign the Policy and/or related forms:

1. President/CEO of the company;
2. Any other person authorized by the Board; or
3. Licensed Underwriter of the company in the event that the signatures in items (1) and (2) above are mere photocopies signatory.

Further, under Circular Letter No. 2020-01, the general agent of the company is allowed to sign the surety bond on behalf of the Insurance Company for as long as it is authorized by virtue of a Board Resolution (as evidence also by Secretary's Certificate).

Applying the above-cited circulars, the Board of Directors of the insurance company has the discretion to authorize an individual to sign the insurance policy forms and its related documents with the only limitation that in case of surety bond, an ordinary agent is prohibited from signing on behalf of the company pursuant to CL No, 2020-01.

Considering the foregoing, the Commission finds that an insurance company authorizing the Licensed Underwriter, through a Board Resolution, with retriable age and not an employee of the company, to sign policy forms/bonds is compliant with CL. No. 23-2009.