

Tax Bulletin

March 2020

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Highlights

Bayanihan to Heal as One Act

Filing, Payment and Other Deadline Extensions due to the Enhanced Community Quarantine (ECQ)

- ▶ RMC No. 27-2020 extends the deadline for the filing of applications for VAT refund and the 90-day processing period prescribed under Section 112 of the Tax Code, as amended.
- ▶ RMC No. 28-2020 extends the filing and payment of the 2019 Annual Income Tax Returns.
- ▶ RMC No. 29-2020 amends RMC No. 26-2020 relative to the extension of deadlines for the filing of various returns and payment of taxes due.
- ▶ RMC No. 30-2020 amends RMC No. 29-2020 and clarifies RMC No. 28-2020 relative to the extension of deadlines for the filing of CY 2019 Income Tax Returns and other tax returns, and the payment of taxes due.
- ▶ RMC No. 31-2020 extends the period for the submission or filing of documents and correspondences pursuant to certain provisions in the Tax Code, as amended, and existing revenue regulations.
- ▶ RMC No. 33-2020 extends the deadline for the availment of Tax Amnesty on Delinquencies under RR No. 4-2019, as amended by RR No. 5-2020.
- ▶ BSP Circular No. 1080 publishes MB Resolution No. 440.A providing for the operational relief measures for foreign exchange (FX) transactions during the period of community quarantine.
- ▶ BOC Memorandum dated 19 March 2020 extends the validity of accreditation of stakeholders during the ECQ.
- ▶ BOC Memorandum dated 23 March 2020 suspends the 7-day period to lodge goods declaration during the ECQ.
- ▶ SEC MC No. 5 extends the deadline for submission of the 2019 Annual Reports and Audited Financial Statements (AFS) and the 2020 Quarterly Reports by companies affected by COVID-19.
- ▶ SEC MC No. 9 provides for guidelines for the filing of the General Information Sheet (GIS) during the COVID-19 outbreak and enhanced community quarantine.
- ▶ SEC MC No. 10 provides for guidelines on the submission of GIS, AFS, forms and documents required under existing laws, rules and regulations by electronic mail and the recognition of electronic signature.
- ▶ PEZA MC No. 17 extends the validity of the Letters of Authority (LOA) of all accredited service enterprises, including those servicing PEZA-registered enterprises in the Visayas or Mindanao
- ▶ RMC No. 32-2020 extends the deadline for filing of the Certificate of Residence for Tax Treaty Relief (CORTT) Forms.

Other Issuances

- ▶ BSP Memorandum No. M-2020-017 directs all BSP-Supervised Financial Institutions to comply with Section 4(aa) of Republic Act (RA) No. 11469 or the "Bayanihan to Heal as One Act" and its Implementing Rules and Regulations (IRR).
- ▶ BSP Memorandum No. M-2020-018 provides for additional guidelines and clarifications on the implementation of the IRR of RA No. 11469 or the "Bayanihan to Heal as One Act" by BSP-Supervised Financial Institutions (BSFIs).
- ▶ CMO No. 08-2020 provides the guidelines for the implementation of the zero-contact policy at the assessment offices in the BOC.
- ▶ CAO No. 7-2020 implements Section 4 (o) of the "Bayanihan To Heal as One Act," which provides for tax and duty -exempt importations.
- ▶ This FDA Advisory prescribes the procedure for the FDA clearance of personal protective equipment ("PPE") prior to customs release.

- ▶ PEZA MC No. 12 announces the availability of PEZA services, including those of PEZA Head office and PEZA zone offices in the National Capital Region, despite the community quarantine declaration for Metro Manila.
- ▶ The BOI Advisory issued on 20 March 2020 extends the deadlines for the submission of reportorial requirements, motions for reconsideration, and annual tax incentive reports under the Tax Incentives Management and Transparency Act (TIMTA) and suspends the submission of other requests and applications in view of the Enhanced Community Quarantine (ECQ).
- ▶ The BOI Notice issued on 22 March 2020 adjusts the deadlines for the filing of incentives applications and/or submission of reports for all BOI-registered enterprises and holders of Special Investor's Resident Visa (SIRV) in view of the Luzon-wide Enhanced Community Quarantine (ECQ).
- ▶ SEC MC No. 7 prescribes the preventive measures against COVID-19 in the handling of records at the Securities and Exchange Commission.
- ▶ PEZA MC No. 11 authorizes IT Enterprises to immediately implement courses of action to respond to and/or pre-empt any adverse COVID-19 eventuality without need for a Letter of Authority (LOA) from PEZA.

Banks and Other Financial Institutions

Correspondent Banking Relationships

- ▶ Circular No. 1078 publishes Monetary Board (MB) Resolution No. 322 dated 27 February 2020 providing for the guidelines on correspondent banking relationships.

Thrift Banks, Rural Banks and Cooperative Banks

- ▶ Circular No. 1079 publishes MB Resolution No. 128 amending the Risk-Based Capital Adequacy Framework for Stand-Alone Thrift Banks (TBs), Rural Banks (RBs) and Cooperative Banks (Coop Banks) under Section 127 and Appendix 62 of the Manual of Regulations for Banks (MORB).

Reserve Requirement

- ▶ Circular No. 1082 publishes MB Resolution No. 423 providing for the reduction of reserve requirement ratios of deposit and deposit substitute liabilities of universal and commercial banks and non-bank financial institutions with quasi-banking functions effective 3 April 2020.

Bureau of Customs

Express Shipments

- ▶ CAO No. 05-2020 provides for customs clearance procedures on express shipments.

Provisional Goods Declaration

- ▶ CMO No. 07-2020 lays down the interim procedure on Provisional Goods Declaration ("PGD").

Conditionally Tax and Duty-Exempt Importations

- ▶ CAO No. 06-2020 implements the conditionally tax and/or duty - exempt importations under Section 800 of the CMTA, excluding subsections (f) and (g).

Capital Gains Tax Exemption under Tax Treaties

- ▶ In determining whether the assets of a Philippine corporation consist principally of immovable property in order to claim capital gains tax exemptions under the Philippine-US Tax Treaty, only the cost of the assets, and not their fair market value, shall be considered.

Demurrage and Detention fees

- ▶ Demurrage and detention fees do not form part of an international sea carrier's Gross Philippine Billings (GPB), which are subject to the 2.5% preferential rate, and instead, form part of the carrier's gross income subject to the regular income tax rate.

Directors'/Trustees' Meetings

- ▶ SEC MC No. 6 lays down the guidelines on the attendance and participation of directors, trustees, stockholders, members, and other persons of corporations in regular and special meetings through teleconferencing, video conferencing, and other remote or electronic means of communication.

Documentary Stamp Tax (DST) on Advances

- ▶ The DST is actually an excise tax, as it is imposed on the transaction rather than on the document. Thus, even while the subject document was not shown, or no debt instrument was identified by the BIR, DST may still be imposed, as long as the transactions were clearly established.

Excise Tax on Heated Tobacco and Vapor Products

- ▶ Revenue Memorandum Circular (RMC) No. 24-2020 provides for the transitory procedures in complying with the administrative requirements of Republic Act (RA) No. 11346, imposing Excise Tax on Heated Tobacco and Vapor Products, as further amended by RA 11467.

Personal Equity and Retirement Account (PERA)

- ▶ BSP Circular No. 1081 publishes MB Resolution No. 1683 providing for the amendments to the regulations governing the Personal Equity and Retirement Account (PERA).

Procedure on Real Property Tax Assessments

- ▶ A claim for exemption is actually an act of assailing the correctness of the assessment. As such, payment under protest under Section 252 (a) of the LGC should first be complied with before a city treasurer can act on the protest.

Procedure on Tax Assessments

- ▶ The Preliminary Assessment Notice (PAN) is part of due process. It gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without need for the issuance of a Final Assessment Notice (FAN). The use of the word "shall" in Revenue Regulations No. 12-99, as amended, describes the mandatory nature of the service of the PAN.
- ▶ Due to failure to state the due dates for the payment of the deficiency taxes in the FAN/FLD and the definite amount of taxes to be paid, the assessments cannot be considered ripe for enforcement and the obligation for such deficiency taxes may not be deemed legally demandable. Thus, the tax assessments are void.

Tax Refunds

- ▶ Compensatory interest or the legal interest imposed by the courts on a judgement award in favor of a party litigant, is considered a form of penalty or indemnity for damages and cannot be considered as taxable income. Thus, the legal interest should not have been subjected to final withholding tax (FWT) rate of 20% based on Section 24 (B) (1) of the Tax Code, as amended.
- ▶ Section 112(A) of the NIRC, as amended, does not require that the input taxes subject to a claim for refund be directly attributable to zero-rated sales. It is sufficient that the input taxes bear a direct or indirect connection with a taxpayer's zero-rated sales. Foreign currency remitted as payment for services must, likewise, be supported by VAT zero-rated official receipts.

Bayanihan to Heal as One Act

Filing, Payment and Other Deadline Extensions due to the Enhanced Community Quarantine (ECQ)

RMC No. 27-2020 extends the deadline for the filing of applications for VAT refund and the 90- day processing period prescribed under Section 112 of the Tax Code, as amended.

RMC No. 27-2020 issued on 17 March 2020

- ▶ The following guidelines shall be observed:
 1. The filing of VAT refund applications covering the quarter ending 31 March 2018 can be made until 30 April 2020; and
 2. The 90-day period of processing current VAT refund claims and those that may be received from 16 March to 14 April 2020 is suspended, with the counting of the number of processing days to resume after the lifting of the "community quarantine" issued by the President.
- ▶ This Circular shall take effect immediately.

RMC No. 28-2020 extends the filing and payment of the 2019 Annual Income Tax Returns.

RMC No. 28-2020 issued on 18 March 2020

- ▶ The filing and payment of 2019 Annual Income Tax Returns (AITR) is hereby extended from 15 April 2020 to 15 May 2020, without the imposition of penalties to taxpayers.
- ▶ Further, taxpayers may file and pay the corresponding taxes due thereon to any Authorized Agent Banks (AAB) nearest to the location of the taxpayer or to any Revenue Collection Officer under the Revenue District Office (file and pay anywhere).
- ▶ This Circular shall take effect immediately.

RMC No. 29-2020 amends RMC No. 26-2020 relative to the extension of deadlines for the filing of various returns and payment of taxes due.

RMC No. 29-2020 issued on 19 March 2020

- ▶ The deadlines for the filing and payment of the following tax returns stated in RMC No. 26-2020 are further extended as follows:

BIR Forms/Returns	Original Due Date	Extended Due Date
Filing and payment of 2550M - Monthly VAT Declarations for Non-eFPS Filers	20 March 2020	20 April 2020 (for the month of February 2020)
eFiling/Filing and ePay/Remittance of 1600WP- Monthly Remittance of Percentage Tax on Winnings and Prizes Withheld by Race Track Operators	20 March 2020	20 April 2020 (for the month of February 2020)

BIR Forms>Returns	Original Due Date	Extended Due Date
eFiling/Filing and ePayment/Payment of 2550Q– Quarterly VAT Declaration (Cumulative for Three (3) Months), eFPS and Non-eFPS	25 March 2020	27 April 2020 [for fiscal quarter (FQ) ending 29 February 2020]
eFiling/Filing and ePayment/Payment of 1702Q–Quarterly Income Tax Return for Corporation, Partnerships and Other Non-Individual Taxpayers	31 March 2020	30 April 2020 (for FQ ending 31 January 2020)
eFiling/Filing and ePayment/Payment of 2000 (DST) and 2000-OT (One-Time Transaction)	5 April 2020	5 May 2020 (for the month of March 2020)
eFiling/Filing and ePayment/Payment of 1600 with Monthly Alphalist of Payees and 1606	10 April 2020	11 May 2020 (for the month of March 2020)
eFiling/Filing and ePayment/Payment of 1600 and 1601C–Withholding Tax Remittance Return for National Government Agencies (NGAs)	10 April 2020	11 May 2020 (for the month of March 2020)
Filing and Payment/Remittance of 1601C– Non-eFPS Filers	10 April 2020	11 May 2020 (for the month of March 2020)
Filing and Payment/Remittance of 2200M Excise Tax Return for the amount of Excise Taxes collected from payment of sales of metallic minerals	10 April 2020	11 May 2020 (for the month of March 2020)

► Other extensions mentioned in RMC 29-2020 are as follows:

BIR Forms>Returns	Original Due Date	Extended Due Date
eFiling of 1601C, 0619E and 0619F–eFPS filers under Group E	21 March 2020	21 April 2020 (for the month of February 2020)
eFiling of 1601C, 0619E and 0619F–eFPS filers under Group D	22 March 2020	22 April 2020 (for the month of February 2020)
eFiling of 1601C, 0619E and 0619F–eFPS filers under Group C	23 March 2020	23 April 2020 (for the month of February 2020)
eFiling of 1601C, 0619E and 0619F–eFPS filers under Group B	24 March 2020	24 April 2020 (for the month of February 2020)
eFiling of 1601C, 0619E and 0619F–eFPS filers under Group A	25 March 2020	27 April 2020 (for the month of February 2020)
ePayment of 2550M for Group E, D, C, B	30 March 2020	30 April 2020 (for the month of February 2020)

BIR Forms>Returns	Original Due Date	Extended Due Date
Filing/Submission of Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF)	31 March 2020	30 April 2020
Filing/Submission of Annual Information Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1604-C), together with its alphalist	31 March 2020	30 April 2020
Submission of Certificate of Compensation Payment (BIR Form No. 2316)	31 March 2020	30 April 2020
Filing and Payment/Remittance of 1601C-eFPS Filers under Group E	11 April 2020	11 May 2020 (for the month of March 2020)
Filing and Payment/Remittance of 1601C-eFPS Filers under Group D	12 April 2020	12 May 2020 (for the month of March 2020)
Filing and Payment/Remittance of 1601C-eFPS Filers under Group C	13 April 2020	13 May 2020 (for the month of March 2020)
Filing and Payment/Remittance of 1601C-eFPS Filers under Group B	14 April 2020	14 May 2020 (for the month of March 2020)

- ▶ For all ONETT transactions (BIR Form Nos. 1706, 1707, 1800, 1801, and 1606), the period to file the return and pay the taxes due shall be extended 30 calendar days from its due date if the date of payment falls within the ECQ period.
- ▶ This Circular shall take effect immediately.

RMC No. 30-2020 amends RMC No. 29-2020 and clarifies RMC No. 28-2020 relative to the extension of deadlines for the filing of CY 2019 Income Tax Returns and other tax returns and the payment of taxes due.

RMC No. 30-2020 issued on 23 March 2020

- ▶ The provisions of RMC No. 29-2020 and RMC 28-2020 are hereby amended and clarified below:

BIR Forms>Returns	Original Due Date	Extended Due Date
Filing & Payment of 2550M - Monthly Value - Added Tax Declaration for Non-eFPS Filers (for the month of February 2020)	20 March 2020	20 April 2020
eFiling/Filing & ePayment/Remittance of 1600WP - Monthly Remittance of Percentage Tax on Winnings and Prizes Withheld by Race Track Operators (for the month of February 2020)	20 March 2020	20 April 2020
eFiling of 2550M - eFPS filers under Group E (for the month of February 2020)	21 March 2020	21 April 2020
eFiling of 2550M - eFPS filers under Group D (for the month of February 2020)	22 March 2020	22 April 2020

BIR Forms>Returns	Original Due Date	Extended Due Date
eFiling of 2550M - eFPS filers under Group C (for the month of February 2020)	23 March 2020	23 April 2020
eFiling of 2550M - eFPS filers under Group B (for the month of February 2020)	24 March 2020	24 April 2020
eFiling of 2550M - eFPS filers under Group A (for the month of February 2020)	25 March 2020	27 April 2020
ePayment of 2550M for Group E, D, C, B (for the month of February 2020)	25 March 2020	27 April 2020
eFiling/Filing & ePayment of 2550Q - Quarterly Value-Added Tax Declaration (Cumulative for Three (3) Months), eFPS and Non-eFPS Filers (for FQ ending February 29, 2020)	25 March 2020	27 April 2020
Submission of Quarterly Summary Lists of Sales/Purchases by a VAT Taxpayer - Non-eFPS - FQ ending Feb 29, 2020	25 March 2020	27 April 2020
Submission of Sworn Statement of Manufacturer's or Importer's Volume of Sales of each Particular Brand of Alcohol, Tobacco Products & Sweetened Beverage Products - FQ ending Feb. 29, 2020	25 March 2020	27 April 2020
Registration of Computerized Books of Accounts & Other Accounting records in electronic format - FY ending 29 Feb 2020	30 March 2020	30 April 2020
Submission of required hard copies of Financial Statement & scanned copies of Form 2307 to e-Filed 1702, MX & EX - FY ending 30 Nov 2019	30 March 2020	30 April 2020
Submission of 2019 Inventory List - FY ending 29 Feb 2020	30 March 2020	30 April 2020
eSubmission of Quarterly Summary List of Sales/Purchases by a VAT Taxpayers- eFPS Filers - FQ ending 29 Feb 2020	30 March 2020	30 April 2020
eFiling/Filing & ePayment/Payment of 1702Q - Quarterly Income Tax Return for Corporation, Partnerships and Other Non-Individual Taxpayers (for FQ ending 31 Jan. 2020)	31 March 2020	30 April 2020
Filing/Submission of Annual Information Return of Income Tax Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF)	31 March 2020	30 April 2020
Submission of the Deadline of Certificate of Compensation Payment (BIR Form No. 2316)	31 March 2020	30 April 2020

BIR Forms>Returns	Original Due Date	Extended Due Date
Filing /Submission of Annual Information Return of Creditable Income Tax Withheld (Expanded) (BIR Form No. 1604-E), together with its alphalist	31 March 2020	30 April 2020
eFiling/Filing & ePayment of 2000 (DST) & 2000-OT (One Time Transactions) (for the month of March 2020)	5 April 2020	5 May 2020
eSubmission of Monthly eSales Report of all Taxpayers using CRM/POS with TIN ending in even number - Month of March 2020	8 April 2020	8 May 2020
eFiling/Filing & ePayment/Payment of 1600 with Monthly Alphalist of Payees and 1606 (for the month of March 2020)	10 April 2020	11 May 2020
eFiling/Filing & ePayment/Remittance of 1600 and 1601C - Withholding Tax Remittance Return for National Government Agencies (NGAs) - (for the month of March 2020)	10 April 2020	11 May 2020
Filing & Payment/Remittance of 2200M Excise Tax Return for the amount of Excise taxes collected from payment made to Sellers of Metallic Minerals (for the month of March 2020)	10 April 2020	11 May 2020
Filing & Payment/Remittance of 1601C - Non-eFPS Filers (for the month of March 2020)	10 April 2020	11 May 2020
eSubmission of eSales Report of all taxpayers using CRM/POS with TIN ending in odd number - Month of March 2020	10 April 2020	11 May 2020
eFiling of 1601C - eFPS Filers Under Group E (for the month of March 2020)	11 April 2020	11 May 2020
eFiling of 1601C - eFPS Filers Under Group D (for the month of March 2020)	12 April 2020	12 May 2020
eFiling of 1601C - eFPS Filers Under Group C (for the month of March 2020)	13 April 2020	13 May 2020
eFiling of 1601C - eFPS Filers Under Group B (for the month of March 2020)	14 April 2020	15 May 2020
eFiling & ePayment of 1601C - eFPS Filers Under Group A (for the month of March 2020)	15 April 2020	15 May 2020
eFiling/Filing & ePayment/Payment of 1700, 1701 & 1701A with required attachments - CY ending 31 Dec 2019	15 April 2020	15 May 2020 (refer RMC No. 28-2020)

BIR Forms>Returns	Original Due Date	Extended Due Date
eFiling/Filing & ePayment/Payment of 1702 RT, MX & EX with required attachments - CY ending 31 Dec 2019	15 April 2020	15 May 2020 (refer RMC No. 28-2020)
ePayment of 1601C for Group E, D, C & B - Month of March 2020	15 April 2020	15 May 2020
eSubmission of Quarterly Summary List of Machines (CRM-POS) sold by all Machine Distributors/Dealers/Vendors/Suppliers - TQ ending 31 March 2020	15 April 2020	15 May 2020
Registration of Bound Loose Leaf Books of Accounts/Invoices/Receipts & Other Accounting Records - FY ending 31 March 2020	15 April 2020	15 May 2020
Submission of List of Medical Practitioners - CQ ending 31 March 2020	15 April 2020	15 May 2020

- ▶ The required attachments for the filing of AITRs shall, likewise, be submitted on or before 15 May 2020.
- ▶ The filing and submission of other reportorial requirements, which were omitted herein and whose deadline(s)/due date(s) fall within the ECQ period shall be extended for 30 days from its due date(s).
- ▶ For all ONETT transactions (BIR Form Nos. 1606, 1706, 1800 and 1801), if the date for its payment will fall due within the ECQ period, the period to file and pay the corresponding taxes due is hereby extended for 30 calendar days from its due date.
- ▶ However, if the ECQ period will be extended further, the filing of returns and payment of the corresponding taxes due thereon, and submission of reports and attachments falling within the enhanced extended period shall also be extended by 30 calendar days.
- ▶ This circular shall apply to the entire Luzon, including NCR, under the ECQ and/or similar measures, and shall also be deemed applicable to other jurisdictions where concerned LGUs have also adopted and implemented ECQ and/or other similar measures in their respective jurisdictions.
- ▶ This Circular shall take effect immediately.

RMC No. 31-2020 extends the period for the submission or filing of documents and correspondences pursuant to certain provisions in the Tax Code, as amended, and existing revenue regulations.

RMC No. 31-2020 issued on 13 March 2020

- ▶ In view of the suspension of work in all offices in the Executive Branch of government from 17 March 2020 to 13 April 2020 due to the Enhanced Community Quarantine imposed, the submission and/or filing of documents and correspondences required is hereby extended as specified below:

Document / Correspondence	Extension
Letter Answer to Notice of Informal Conference (NIC)	Extension of 30 days from the time of the date of lifting the ECQ
Response to the Preliminary Assessment Notice (PAN)	
Protest Letter to Final Assessment Notice (FAN) / Formal Letter of Demand (FLD)	
Submission of relevant supporting documents to support the request for re-investigation of audit cases with FAN/FLD	
Appeal/Request for Reconsideration to the Commissioner on the Final Decision on Disputed Assessments (FDDA)	
Other similar letters and correspondences with due dates	

- ▶ This Circular shall apply to taxpayers whose response to the received NIC, PAN, FAN, FLD, FDDA, and other similar notices fall due on the dates covered within the period of ECQ. It shall also apply to other jurisdictions where the concerned Local Government Units have also adopted and implemented the ECQ and other similar measures.
- ▶ This Order shall take effect immediately.

RMC No. 33-2020 extends the deadline for the availment of Tax Amnesty on Delinquencies under RR No. 4-2019, as amended by RR No. 5-2020.

RMC No. 33-2020 issued on 24 March 2020

- ▶ RR No. 5-2020 amended RR 4-2019 particularly on the duration of availment of Tax Amnesty on Delinquencies, in consideration of the current circumstances prevailing in the country in relation to the declaration of COVID-19 Global Pandemic.
- ▶ Hence, the deadline to avail the tax amnesty on delinquencies is hereby extended from 23 April 2020 to 23 May 2020.

Circular No. 1080 publishes MB Resolution No. 440.A providing for the operational relief measures for FX transactions during the period of ECQ.

BSP Circular No. 1080 dated 27 March 2020

- ▶ On submissions to the BSP:
 1. Applications for approval and registration of foreign/foreign currency loans/borrowings/investments, including all supporting documents, shall be submitted electronically as follows:

For approval of public sector foreign/foreign currency loans/borrowings	rquintos@bsp.gov.ph jevangelista@bsp.gov.ph
For approval/registration of private sector foreign/foreign currency loans/borrowings	rosetan@bsp.gov.ph eevangelistajr@bsp.gov.ph
For registration of inward foreign investments	yeungjr@bsp.gov.ph cc: antoniocc@bsp.gov.ph

2. No monetary penalties for delays incurred in the submission of reports will be imposed by the BSP. However, the BSP may require reports/information necessary for its function to ensure monetary and financial stability.
3. Documentary requirements for the sale of FX by authorized agent banks (AABs)/ AAB forex corps may be submitted electronically to the FX-selling institution through official emails or digital channels only and that the transaction is still subject to the bank's due diligence/"Know Your Customer"/risk management policies.
4. Unsigned documents or those with mere e-signatures and/or without the required notarizations may be accepted by the BSP or FX-selling/remitting institutions provided that the authorized signatory shall send these electronically through official email or digital channels and shall separately send an attestation as to its authenticity.

► On Prescriptive Period:

1. A grace period of 1 month from the lifting of the community quarantine shall apply to: (1) unregistered foreign investments covered by the grace period provided under BSP Circular No. 1030 dated 5 February 2019; and (2) foreign investments due for registration on 8 March 2020 or up to the period of community quarantine;
2. The prescriptive period on compliance in relation to foreign loan or borrowings that are due during the period of community quarantine and 1 month thereafter is temporarily suspended.

► On Processing Fees:

1. Processing fees under Appendix 20 of the FX Manual for applications covering foreign/foreign currency loans/borrowings of the private sector with FX obligations due within the period of the community quarantine shall be waived.
2. Processing fees for foreign currency loans/borrowings of the private sector without FX shall still be assessed.

► On BSP-issued documents:

1. All BSP-issued documents during the period of the community quarantine will be in electronic form.
2. AABs/AAB forex corps shall verify the authenticity of the said documents with the BSP International Operations Department.

BOC Memorandum dated 19 March 2020 extends the validity of accreditation of stakeholders during the ECQ.

BOC Memorandum dated 19 March 2020

- All customs accreditation of BOC Stakeholders, such as importers, customs brokers, Super Green Lane ("SGL") importers, Customs Bonded Warehouses ("CBWs"), Customs Facilities and Warehouses ("CFWs"), or any other third-party transacting and accredited by the BOC, that will expire during the period of implementation of the ECQ, starting 17 March 2020, shall remain valid.
- All stakeholders with expired accreditation during the said period will be given a month from the lifting of the ECQ to submit application for the renewal of their accreditation.

BOC Memorandum dated 23 March 2020 suspends the 7-day period to lodge goods declaration during the ECQ.

BOC Memorandum dated 23 March 2020

- The prescribed period of 7 days to lodge goods declaration is hereby suspended for the duration of the emergency.
- At any time during the declaration of ECQ, lodgment and filing of goods declaration may be made within 15 days from the date of discharge of last package.
- The period to file goods declaration may be extended for another 15 days on valid grounds upon request, which may be done personally or online by opening a ticket at the CCPS at client.customs.gov.ph, duly acknowledged by BOC.
- This Memorandum shall cover shipments with the date of discharge of last package starting 10 March 2020.

SEC MC No. 5 extends the deadline for submission of the 2019 Annual Reports and AFS and the 2020 Quarterly Reports by companies affected by COVID-19.

SEC MC No. 5 Series of 2020 dated 12 March 2020

- ▶ Affected corporations with only domestic operations may file until 30 June 2020, their annual financial statements for the period ended 31 December 2019.
- ▶ For companies with domestic and foreign operations, the filing period is extended until 30 June 2020 or 60 days from the date of lifting of travel restrictions by concerned government authorities, whichever comes later.
- ▶ The above extension is subject to compliance with the following requirements:
 1. For the Annual Report/SEC Form 17-A of publicly-listed companies:
 - ▶ Submission of a written request to the Commission through the Markets and Securities Regulation Department for an extension of time not later than 5 days before the filing deadline.
 - ▶ Sworn certification of the requesting company signed by its President and Treasurer confirming that some conditions are met: (i) financial year-end is 31 December 2019; (ii) it has significant business operations/subsidiaries in areas/territories affected by COVID-19; (iii) the preparation of financial statements and timely completion of statutory audit of the company's financial statements as of 31 December 2019 have been affected by the measures in response to the COVID-19.
 - ▶ The request shall be accompanied by a sworn certification by the company's external auditor confirming conditions (ii) and (iii) above.
 - ▶ The company shall continuously observe its disclosure obligations under the SRC and the Philippine Stock Exchange Consolidated Listing and Disclosure Rules.
 - ▶ All material information, whether price-sensitive or trade-sensitive, must be disclosed on a timely basis. Where the company's operations are materially affected by the COVID-19 outbreak, disclosure on the financial impact or any other material aspects should be made immediately.
 - ▶ Given the impact of the delayed release of annual reports, the requesting company must submit to the Commission an indicative date to convene the Annual Stockholders' Meeting.
 2. For the Annual Reports and/or AFS of the companies that are not publicly-listed:
 - ▶ A sworn certification signed by the company's President and Treasurer that it fulfills conditions (i) to (iii) above.
 - ▶ External auditor's sworn certification of its confirmation on items (ii) and (iii) above.
- ▶ The Commission, likewise, extends the period for filing of the applicable Quarterly Reports (SEC Form 17-Q) for each quarter of year 2020 for publicly-listed companies whose requests for extension to file Annual Reports (SEC Form 17-A) were granted by the Commissions.
- ▶ Companies whose preparation of financial statements or completion of statutory audits are not affected by the COVID-19 outbreak are required to file their Annual Reports and/or AFS for the year ended 31 December 2019 within the periods prescribed under existing rules and regulations.
- ▶ This Memorandum Circular shall take effect upon its publication in 2 newspapers of general circulation in the Philippines.

(Editor's Note: This MC, which was published on 19 March 2020, was amended by SEC Notice dated 18 March 2020. In the said notice, the Commission En Banc resolved to DISPENSE with the following requirements, both for publicly listed and non-publicly listed companies, as provided in SEC Memorandum Circular No. 5, Series of 2020:

- ▶ *Sworn certification of the requesting company signed by its President and Treasurer confirming that all of the following conditions are met:*
 1. Its financial year-end is 31 December 2019;
 2. It has significant business operations or significant subsidiaries in areas/ countries/ territories affected by COVID-19; and
 3. The preparation of financial statements and timely completion of statutory audit of the company's financial statements as of 31 December 2019 has been affected by the travel restriction/ ban, temporary suspension of business operations, and/or measures imposed by the authorities or companies in response to COVID-19.
- ▶ *The request shall be accompanied by a sworn certification of the company's external auditor confirming items 2 and 3 of paragraph above.*

The Commission En Banc further resolved to grant the extension in the filing of Annual Reports and/or Audited Financial Statements to companies with fiscal years ending 30 November 2019.)

SEC MC No. 9 provides for guidelines for the filing of the General Information Sheet (GIS) during the COVID-19 outbreak and enhanced community quarantine.

SEC MC No. 9 Series of 2020 dated 18 March 2020

- ▶ The following deadlines shall be observed for each situation:
 1. Where Election of Directors, Trustees, and Officers was held, the GIS shall be submitted within 30 days from actual meeting through mail [ordinary or registered], private courier, or email at mlmiwanag@sec.gov.ph, mdtmabuyo@sec.gov.ph or cmdnotice@sec.gov.ph.
 2. Election of directors, trustees, or officers originally scheduled between 1 March 2020 and 31 May 2020, that is not held on account of health and safety reasons in relation to the COVID-19 disease and the corporation has no facilities for remote communication, shall be reported to the Commission through a notice within 30 days from the original meeting date either through mail, courier or by electronic means; accompanied by a statement specifying a new date for election which is within sixty 60 days from the originally scheduled date.
 3. The non-holding of election due to reasons other than that provided in no. 2 above, as well as the non-holding of election originally scheduled on dates outside the covered period, shall be reported to the SEC within 30 days from the date of the scheduled election and shall specify the new date for election, which shall not be later than 60 days from the scheduled date.
 - ▶ The non-holding of election initially reported as due to health and safety reasons in relation to the COVID-19 disease may, nevertheless, be considered as a non-holding of election due to other causes if, upon application of a stockholder, member, director, or trustees, it has been verified that the non-holding of election is indeed not related to the COVID-19 disease.
 - ▶ If it is, likewise, found that the non-holding of election is unjustified under the circumstances, the Commission shall issue an order directing the issuance of a notice stating the time and place of the election in accordance with Section 25 of the Revised Corporation Code.
- ▶ The report on non-holding of annual meeting in accordance with nos. 2 and 3 above shall be submitted to cmdnotice@sec.gov.ph, signed and dated by the Corporate Secretary and shall contain the following:
 1. Corporate Name;
 2. SEC Registration Number;
 3. Date of annual meeting per By-Laws;
 4. Date of actual meeting;
 5. Reason for the non-holding of meeting;
 6. Venue of the intended meeting
- ▶ Results of the election of directors, trustees, or officers subsequent to the report of non-holding of elections as provided in nos. 2 and 3 above, and which is held outside the covered period, shall be reported to the Commission through the submission of a GIS within 30 days from the date of actual meeting when the election was held. In such a case, the GIS submitted shall no longer enjoy the same forbearance from the penalty for late submission as provided in no. 1 hereof.
- ▶ After this memorandum circular comes into force, and upon evaluation of ensuing developments relative to the COVID-19, and the ECQ, the Commission may extend the covered period provided as deemed necessary.

SEC MC No. 10 provides for guidelines on the submission of GIS, AFS, forms and documents required under existing laws, rules and regulations by electronic mail and the recognition of electronic signature.

SEC MC No. 10 Series of 2020 dated 20 March 2020

► During the state of public health emergency, the SEC will accept electronic copies of the documents enumerated above, submitted through electronic mail to the email addresses to be specified by the SEC, provided that all of the following required specifications are complied with:

1. The submitted documents should be in PDF version, preferably with Text Layer.
2. The submitted documents should contain an Electronic Signature as defined in Section 5 (e) of Republic Act No. 8792 14 June 2000, also known as the "Electronic Commerce Act of 2000.", which states:

"Electronic Signature" refers to any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedures employed or adopted by a person and executed or adopted by such person with the intention of authenticating or approving an electronic data message or electronic document."

For purposes hereof, electronic images of wet or physical signatures of authorized and appropriate representatives affixed to the documents covered by this Circular and submitted to the SEC, shall be recognized.

3. The submitted documents should be sent as Multipurpose Internet Mail Extensions (MIME) attachments to an email from a valid company email account or address of an authorized representative.
4. Subject to Item No. 5 below and owing to the difficulty of securing the services of a Notary Public during a state of public health emergency, the documents covered by this Circular, which are required to be executed and submitted under oath, may be submitted unnotarized. It shall be understood however, that the person(s) whose signature appears in the documents submitted shall be held accountable under the appropriate provisions of the Revised Corporation Code.
5. The body of the email should contain a statement declaring the authenticity of the submitted documents and a commitment to submit physical versions of the exact submitted documents to the SEC once the state of public health emergency is lifted. This statement should include the (i) full name; (ii) corporate address; and (iii) mobile number of the authorized representative making the submission.

For purposes hereof, the SEC shall set and announce a specific date for submission of the duly notarized hard copies of the documents submitted through electronic mail after the state of public health emergency is lifted.

6. The sender should request for a Return Receipt and a Delivery Status Notification to ensure that the email has been sent and has also been received by the SEC.
- The Commission shall, thereafter, require physical copies of required reportorial submissions according to established rules and regulations once the state of public health emergency has been lifted.

(Editor's Note: This MC, published on 3 April 2020, was amended by SEC Notice dated 16 April 2020, which provides for additional guidelines on submission of the General Form for Financial Statements (GFFS) or Special Form for Financial Statements (SFFS) by electronic mail during the ECQ period)

PEZA MC No. 17 extends the validity of the Letters of Authority (LOA) of all accredited service enterprises, including those servicing PEZA-registered enterprises in the Visayas or Mindanao.

PEZA MC No. 17 Series of 2020 dated 25 March 2020

- ▶ LOAs of all accredited PEZA service enterprises, including those in the Visayas or Mindanao, which have expired or are expiring during the period of the ECQ, are extended until 30 June 2020, provided that:
 1. For Customs brokers and freight forwarders - their respective licenses as customs broker and freight forwarder issued by the respective regulatory-issuing government agency are valid within the said period;
 2. For Truckers/Haulers - their respective franchise/provisional authority issued by LTRFB is valid within the said period;
 3. For Security agencies that are not covered by Registration Agreements, validity of their certification to operate with PEZA enterprises is extended until 30 June 2020, provided that their respective PNP License to Operate is valid within the said period;
 4. Corresponding applications for renewal of the LOAs which expired during the period of ECQ in Luzon shall be submitted to PEZA within 15 days from the lifting of the ECQ, and the same deadline will apply if the ECQ is implemented in Visayas and Mindanao or in certain areas thereof;
 5. Those which received already their LOAs during the ECQ via email may pay the franchise fee and submit proof of payment of the surety bond within 7 days from the lifting of the ECQ; and
 6. The service enterprises shall render PEZA free and harmless from liability, responsibility, claims or payment resulting from their operations, including that of their employees, or that arising from any issue because the service enterprise continued to handle PEZA clients even without a valid license from its regulatory-issuing government agency.

RMC No. 32-2020 extends the deadline for filing of CORTT Forms.

RMC No. 32-2020 issued on 23 March 2020

In order to give relief to all the parties concerned, the deadline for filing of CORTT Forms for final withholding taxes on dividends, interests, royalties paid on or before 10 March 2020 is hereby extended until 30 April 2020, without the imposition of penalties.

Other Issuances

BSP Memorandum No. M-2020-017 directs all BSP-Supervised Financial Institutions to comply with Section 4(aa) of RA No. 11469 or the "Bayanihan to Heal as One Act" and its Implementing IRR.

BSP Memorandum No. M-2020-017 dated 1 April 2020

- ▶ All lenders including, but not limited to, banks, quasi-banks, non-stock savings and loan association, credit card issuers, pawnshops and other credit granting financial institutions under the supervision of the BSP are directed to implement a minimum of 30-day grace period for all loans with principal and/or interest falling due within the period of the ECQ. It shall, likewise, apply to persons or entities with multiple loans wherein the grace period shall apply to each loan.
- ▶ The initial 30-day grace period shall be automatically extended if the ECQ is extended by the President pursuant to his emergency powers under the "Bayanihan to Heal as One Act".
- ▶ No interest and/or penalties, fees or other charges shall be imposed on future payments or amortizations of borrowers availing of the grace period.
- ▶ Covered institutions are prohibited from requiring their clients to waive the application of the Bayanihan To Heal as One Act, particularly the mandatory 30-day grace period. No previously executed waiver covering payments falling due during the ECQ period shall be considered valid.
- ▶ Refusal to provide the 30-day grace period shall be punishable with imprisonment or 2 months or a fine of not less than P10,000 to P1M, or both, at the discretion of the court.

BSP Memorandum No. M-2020-018 provides for additional guidelines and clarifications on the implementation of the IRR of RA No. 11469 or the "Bayanihan to Heal as One Act" by BSFIs.

BSP Memorandum No. M-2020-018 dated 6 April 2020

- ▶ For purposes of BSP implementation, all BSFIs with lending operations are covered by the IRR of the "Bayanihan to Heal as One Act".
- ▶ The mandatory 30-day grace period applies automatically. Prior application to avail the grace period is not required.
- ▶ The 30-day grace period shall commence from the payment due date falling within the ECQ period and not from the lifting thereof.
- ▶ The IRR does not apply to loans granted by financial institutions (FIs) abroad to Filipino residents.
- ▶ All waivers executed by borrowers covering loans with amortizations falling due during the ECQ period are considered void.
- ▶ The IRR covers all loan accounts, regardless of whether these are current or past due. It shall apply also to fees and/or charges related to loans or credit lines granted.
- ▶ Loan accounts with issued post-dated checks or auto debit or auto deduct arrangements are, likewise, covered by the IRR. FIs shall coordinate with their clients if they wish to proceed with the arrangement despite the mandatory 30-day grace period granted by the "Bayanihan to Heal as One Act" or reverse transactions already effected prior to the enactment of the law and its IRR.
- ▶ The curing period provided under Sec. 304 of the MORB shall be applied based on the new due date of the covered account or loan.
- ▶ Loan amortization will effectively be rescheduled with the last payment due date or the final due date of the entire loan to be moved by 30 days.
- ▶ Interest accrued during the 30-day grace period may be paid in lump sum on the new date or on a staggered basis over the remaining term of the loan.
- ▶ The IRR applies to all loans regardless of its amortization schedule (monthly, quarterly, semestral).
- ▶ Accounts applying the 30-day grace period will not be included in the past due loan ratio computation of banks.
- ▶ For credit card revolvers (i.e. borrowers that do not pay in full every payment period), interest will continue to accrue and will be payable on the next due date either in lump sum or on staggered basis.
- ▶ Credit card transactors will not be charged any interest during the grace period if they pay the total outstanding balance on or before the new due date.

CMO No. 08-2020 provides the guidelines for the implementation of the zero-contact policy at the assessment offices in the BOC.

CMO No. 08-2020 dated 11 March 2020

- ▶ This CMO shall apply to all licensed customs broker, declarants, importers, customs broker's representatives and other stakeholders (hereinafter referred as "Client") dealing directly with the BOC.
- ▶ Documents to be filed with the BOC shall be submitted in hard and in electronic Portable Document Format ("PDF"), subject to the following conditions:
 - ▶ Hard copies of the goods declaration and the supporting documents must be placed in a long brown envelop properly labeled using size 16 Arial font with the necessary details, all in capital letters:
 - ▶ For electronic copies, only PDF file type shall be accepted, and each document should be submitted separately, using a prescribed resolution and file name format.
 - ▶ In the event of system malfunction or the Customer Care Portal Center (CCPC) link (client.customs.gov.ph) becomes inaccessible, an alternate link will be provided as a redundant and backup system where the importer/declarant may follow-up or inquire on the status of the goods declaration filed with the Entry Processing Unit ("EPU").

(Editor's Note: CMO No. 8-2020 took effect on 23 March 2020)

CAO No. 7-2020 implements Section 4 (o) of the "Bayanihan To Heal as One Act" which provides for tax and duty -exempt importations.

CAO No. 7-2020 dated 30 March 2020

- ▶ The importation of health equipment and supplies deemed as critical or needed to carry out the objective of the Act and address the COVID-19 public health emergency shall be exempt from duties, taxes, and fees, including:
 1. PPE such as gloves, gowns, masks, goggles, face shields, surgical equipment and supplies;
 2. Laboratory equipment and its re-agents;
 3. Medical equipment and devices;
 4. Support and maintenance for laboratory and medical equipment;
 5. Surgical equipment and supplies;
 6. Medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines (e.g. paracetamol tablets and suspension, mefenamic acid, vitamins tablet and suspension, hyoscine tablet and suspension, oral rehydration solution, and cetirizine tablet and suspension);
 7. COVID-19 testing kits; and
 8. Others as may be identified by the DOH.
- ▶ Manufacturers included in the Master List of the Department of Trade and Industry ("DTI") and other incentive granting bodies of the National Government may avail of the tax and duty exemption for their importation of materials necessary to produce health equipment and supplies deemed as critical or needed to carry out the objective of the Act.
- ▶ Importers of medical equipment and supplies for commercial purposes are exempt from the presentation of the Certificate of Product Notification ("CPN") or Certificate of Product Registration ("CPR") issued by the FDA prior to release from the BOC, provided, that they are able to provide a copy of the License to Operate ("LTO") and proof of application for product notification with the FDA, provided that for ventilators, respirators and their respective accessories imported for commercial purposes, importers only need to present a copy of their LTO.
- ▶ Foreign donations of PPEs, imported for non-commercial purposes, and foreign donations of ventilators, respirators, and their respective accessories to be used in the treatment of COVID-19 patients, shall not be required clearance from FDA prior to release.
- ▶ Importers or companies, other than medical device establishments, who use face masks in the performance of their jobs and are strictly for company use can directly import without any certification from the FDA.
- ▶ Imported health products for donation, duly certified by the regulatory agency or their accredited third party in the originating countries with established regulation, shall automatically be cleared. The certification shall not be required for health products, which is not subject to clearance from FDA.
- ▶ Other regulations issued by FDA, including Circular No. 2020-009 dated March 19, 2020 shall also be complied with, unless inconsistent with the provision of the Act.
- ▶ Customs clearance procedure for importations of medical equipment and supplies for commercial purposes shall be in accordance with existing rules and regulations issued by the BOC, provided that the actual value of the imported goods shall determine whether the clearance procedure is under formal or informal entry process.
- ▶ Clearance procedure for donated medical equipment and supplies shall be under the informal entry process.
- ▶ The shipments entitled to exemption under Section 4 of the Act may be released under Provisional Goods Declaration subject to the submission of TEI from the DOF-RO after 12 April 2020 or upon lifting of the Declaration of ECQ, whichever comes earlier.
- ▶ The grant of exemption shall only cover importations which arrived and were cleared by the BOC for 3 months from effectivity of the Act, unless extended by Congress. This is without prejudice, however, to the privilege granted to importers under Section 121 or 800 (m) of the CMTA.
- ▶ CAO No. 7-2020 shall take effect immediately after publication in the Official Gazette or a newspaper of national circulation.

(Editor's note: CAO No. 7-2020 was published at The Official Gazette and The Manila Times on 1 April 2020)

This FDA Advisory prescribes the procedure for the FDA clearance of PPE prior to customs release.

Food and Drug Administration (FDA) Advisory No. 2020-420 dated 20 March 2020

- ▶ The FDA Advisory is adopted for the expedient release of certain PPEs within the jurisdiction of the BOC, which includes the following:
 1. Face Masks including N95 masks;
 2. Shoe Covers;
 3. Gloves;
 4. Head Covers; and
 5. Gowns
- ▶ For the above-mentioned PPEs intended for entry to the local market for commercial use, the presentation of a copy of the importer's License to Operate (LTO) and proof of application for notification, such as electronic acknowledgement, should be sufficient compliance for customs release.
- ▶ For foreign donations of the same PPE, clearance from FDA shall not be needed.
- ▶ FDA Advisory No. 2020-420 shall be in effect until further notice.

PEZA MC No. 12 announces the availability of PEZA services, including those of PEZA Head office and PEZA zone offices in the National Capital Region, despite the community quarantine declaration for Metro Manila.

PEZA MC No. 12 Series of 2020 dated 13 March 2020

- ▶ PEZA Head Office and all PEZA zone offices in Metro Manila will continue to render all its services for the usual working days during the entire period of the quarantine from 15 March 2020 to 12 April 2020, either as skeletal force or work-from-home basis.
- ▶ Action on requests for disposition of equipment shall be deferred until after the quarantine period, unless it is an urgent matter for the concerned enterprise.
- ▶ Applications for Letters of Authority (LOA) to the PEZA Head Office and other letters of request (except permit applications) may be filed through email to the Office of the PEZA Director General (DG), or to the Zone Administrator (ZA)/Zone Manager (ZM)/Officer-in-charge (OIC), who will forward the application to the Office of the DG.
- ▶ Import Permits and Export Declaration applications will continue to be processed through the PEZA electronic Import Permits System (eIPS) and the PEZA Automated Export Declaration System. All supporting documents will be submitted to the ZA/ZM/OIC via email by the authorized PEZA representative of the enterprise.
- ▶ Applications for PEZA Permit Forms 8105 and 8106 may be filed via email to the ZA/ZM/OIC. The hard copy will be filled up, scanned and sent via email together with the supporting documents. The accomplished form will be signed, scanned and emailed back by the ZA/ZM/OIC to the enterprise, with a message indicating the approval.
- ▶ Inspection of goods may be done virtually using available mobile phone applications such as Viber videocall, FaceTime, etc.
 1. The authorized representative of the Enterprise shall himself make the videocall to the ZA/ZM/OIC of the PEZA zone officer designated by the ZA/ZM/OIC at the time agreed upon and present his/her ID before the virtual inspection is conducted.
 2. The PEZA enterprise representative shall, after presenting his/her ID shall establish his location and the location of the goods for inspection.
- ▶ PEZA fees will continue to be paid at the PEZA collecting officer in the zone location of the enterprise or to the PEZA Head Office cashier, as applicable. For LOA applications or letters of request intended for the PEZA Head Office, payment may be made in the zone office of the enterprise.
- ▶ All PEZA units in the Joint PEZA-Customs Office (JPCO) in all ports will be open and manned by PEZA personnel in accordance with the work schedules of the BOC counterpart in the JPCO, in the respective ports.
- ▶ Applications for Building Permits for new and expansion projects, including Occupancy Permits, may be filed via email to the applicant's respective PEZA Building Official. For NCR-based IT parks and Manufacturing Ecozones, PEZA will allow the applicant locator-enterprise to submit online its Program of Work and Work Safety Plan and to proceed with its construction/fit-out works. The same procedure will apply to their applications for Annual Inspection Certificate and renewal of Permit to Operate. PEZA will waive the penalty for incomplete Building Permit applications during the quarantine period.

The BOI Advisory extends the deadlines for the submission of reportorial requirements, motions for reconsideration, and annual tax incentive reports under the TIMTA and suspends the submission of other requests and applications in view of the ECQ.

- ▶ Tax and duty exemption will be granted to importations by PEZA-registered enterprises of face masks, gloves, sanitizers, alcohol and other disinfectant/sanitizer solutions and sanitizing equipment needed for use of their employees and facilities. Importation of these goods will be lodged as Regulated Importables in the PEZA eIPS

BOI Advisory issued on 20 March 2020

- ▶ The deadline for submission of reportorial requirements is extended as follows:

Report	Prescribed Deadline	Extension
BOI Form S-1 (Annual Report on Actual Operation)	<ul style="list-style-type: none"> ▶ Calendar Year - on or before April 30 ▶ Fiscal Year - 4 months after the end of Fiscal Year 	<ul style="list-style-type: none"> ▶ Calendar Year - on or before May 30 ▶ Fiscal Year - 4 months and 15 days after the end of Fiscal Year
Audited Financial Statement (AFS)	Within 30 days from the date of eFiling with the BIR	On or before 30 May 2020
Income Tax Return (ITR)	Within 30 days from the date of eFiling with the BIR	On or before 30 May 2020

- ▶ The filing of MRs is extended as follows:

Motion	Prescribed Deadline	Extension
Motion for Reconsideration (MR)	Within 30 days from receipt of the Board decision	If the prescribed deadline falls within the ECQ period, filing of MR will be extended within 5 working days from the lifting of the ECQ

The BOI-registered enterprises may opt to submit reports and file MRs during the ECQ period to lcsecqperiodsubmission@boi.gov.ph.

- ▶ The deadline for submission of TIMTA Reports is extended as follows:

Report	Prescribed Deadline	Extension
Annual Tax Incentives Report (AITR) under TIMTA	Within 30 days from filing of the ITR with the BIR.	On or before 30 May 2020

The BOI-registered enterprises may opt to submit TIMTA reports during the ECQ period to KHCo@boi.gov.ph.

- ▶ The date of email submission and filing, upon due receipt, shall be considered as the official filing date, subject to the submission of actual documents and requirements, and payment of the filing fee if required, within the extension period provided.
- ▶ The filing and processing of any requests related to a BOI-registered project, such as issuance of a Certified True Copy (CTC) of Certificates of Registration, etc. are suspended.
- ▶ The submission and processing of Motor Vehicle Development Program (MVDP) related requests or applications shall continue to be processed online.
- ▶ For prospective applicants of other enterprises, the submission and processing of applications for registration or accreditation are suspended. However, applicants may opt to submit through email, their applications to the concerned BOI Services below for check listing and initial evaluation:

Service	Director/OIC	Email Address
AITR under TIMTA	Within 30 days from filing of the ITR with the BIR.	EMCagatan@boi.gov.ph
Infrastructure and Services Industries Service	Mary Ann E. Raganit	MERaganit@boi.gov.ph
Resource-Based Industries Service	Raquel B. Echague	RBEchague@boi.gov.ph

The applicants will be notified of the deficiencies or any action taken on these email submissions through email.

- ▶ For pending applications, the deadline for the submission of pre-registration requirements for those already notified in writing of the approval of their projects prior to the ECQ is extended for 15 working days from the lifting of the ECQ.
- ▶ For applications, which were officially received and are pending evaluation, the same shall be processed within 20 working days upon the lifting of the ECQ.

The BOI Notice adjusts the deadlines for the filing of incentives applications and/or submission of reports for all BOI-registered enterprises and holders of SIRV in view of the Luzon-wide Enhanced ECQ.

BOI Notice issued on 22 March 2020

- ▶ The deadlines for the filing of incentives applications and/or submission of reports are adjusted as follows:

Incentive/Report	Prescribed Deadline	Adjustment/Extension
Income Tax Holiday	Within 30 days from filing of ITR with the BIR	Within 30 days from the extended date of eFiling of ITR with the BIR due to the ECQ
Tax & Duty Exemption on Imported Spare Parts & Supplies under Art. 39(I)	Within 15 days from date of transfer of shipment to bonded warehouse	Within 15 working days from the lifting of ECQ if the prescribed deadline falls within the ECQ
AITR under TIMTA	Within 30 days from filing of the ITR with the BIR.	On or before 30 May 2020
ITR Conversion of Probationary to Indefinite SIRV	Within 6 months from grant of Probationary SIRV	Within 30 days from the lifting of the ECQ if the prescribed deadline falls within the ECQ
Annual Report for SIRV holders	On or before expiration of SIRV ID	Within 30 days from the lifting of the ECQ if the prescribed deadline falls within the ECQ

- ▶ For the following incentives and other requests with no prescribed deadlines, acceptance and processing of applications are suspended and would resume after the ECQ period:
 1. Duty/Tax Exemption on Imported Capital Equipment under E.O. 85, R.A. 9513, and R.A. 8479;
 2. Unrestricted Use of Consigned Equipment;
 3. Employment of Foreign Nationals (47(a)2 Visa);
 4. New Probationary SIRV and other related requests (e.g. SIRV ID renewal, certifications, etc.);
 5. Endorsement for VAT-zero Rating; and
 6. Garments and Textile Import Services (i.e. BMW License Renewal, CBMW Membership Accreditation, Accreditation and Registration of Subcontractors).

SEC MC No. 7 prescribes the preventive measures against COVID-19 in the handling of records at the Securities and Exchange Commission.

SEC MC No. 7 Series of 2020 dated 16 March 2020

- ▶ For plain/authenticated copy of SEC documents, the following are the options:
 1. Online Application; and
 2. Call Center Facility.
- ▶ The existing Appointment System and Public Kiosk will be temporarily suspended. All public requests shall pass through the Online Application and the Call Center Facility.
- ▶ Filing/submission of reports and/or other documents may be done through the SEC Express Nationwide Submission (SENS) which may be done as follows:
 1. The client should accomplish and sign the checklist and undertaking available in the SENS website and attach these to the documents to be submitted.
 2. The client proceeds to the courier of his/her choice and may or may not avail of the return copy.
 3. The courier delivers the documents to the SEC Office.
 4. The SEC Receiving Officer shall stamp the documents "Received", put his initial on the documents and distribute copies of documents to the SEC department concerned.
- ▶ Another option for filing/submission of reports and/or other documents to SEC is through the Philippine Postal Corp whereby clients may file their reports/documents through either of the following modes: (a) Registered Mail with return card issued by the Philippine Postal Corp.; (b) ordinary mail or private courier duly accompanied by an affidavit of service, if registry service is not available in their official place of business.
- ▶ The reports/documents submitted to the SEC through registered mail shall be considered filed on the date of mailing as shown by the post office stamp on the envelope or the registry receipt. Reports/documents submitted through ordinary mail or private courier shall be considered filed on the date of actual receipt thereof by the SEC.
- ▶ Validation of forms and contents of reports/documents submitted shall be done by SEC Operating Department requiring the report.
- ▶ All filings at the Head Office and Satellite Offices shall be temporarily suspended until further notice.
- ▶ This Memorandum Circular shall take effect immediately.

PEZA MC No. 11 authorizes IT Enterprises to immediately implement courses of action to respond to and/or pre-empt any adverse COVID-19 eventuality without need for a LOA from PEZA.

PEZA Memorandum Circular (MC) No.11 Series of 2020 dated 5 March 2020

- ▶ Courses of action that may be implemented by IT Enterprises in relation to the COVID-19 and authorized without need of LOA are as follows:
 1. Work-from-home (WFH) arrangements for certain employees delivering services identified by the IT Enterprise as critical;
 2. WFH arrangements for certain employees exhibiting symptoms akin to a person infected with COVID-19 but physically able to work;
 3. WFH arrangements for a group/s of employees suspected of exposure to persons exhibiting symptoms of COVID-19 infection;
 4. Re-assignment / re-distribution of employees to other PEZA-registered facilities of the IT Enterprise in other PEZA IT Parks/Centers;
 5. Assignment of certain employees to work in facilities / buildings that are not PEZA-registered IT Parks/Centers;
 6. Increase in the number of employees covered in the LOA for Business Continuity Plan (BCP) previously issued by PEZA to the IT Enterprise;
 7. Other justifiable and reasonable courses of action, including pre-emptive action, to respond to COVID-19.
- ▶ IT Enterprises availing of the authorization shall be subject to the following conditions relative to their COVID-19 response courses of action:
 1. Within 7 working days from the implementation of the course of action, the IT Enterprise will submit a letter, containing the details, conditions and attachments prescribed in the MC, addressed to the PEZA Director General signed by/ emailed from the email account of any of its top 3 officials identified in the Economic Zone Monthly Performance Reports (EZMPR) submitted by the IT Enterprise to PEZA;
 2. The IT Enterprise shall be bound by the conditions stated in its letter, and any violation thereof shall be subject to applicable penalties from PEZA;
 3. Subsequent courses of action, temporary re-assignment of additional employees, additional equipment and assets withdrawn from the PEZA-registered facility of the IT Enterprise not covered by its original submission shall be subject to a separate subsequent submission of the documents to cover the additional course/s of action implemented by the IT Enterprise;
 4. IT Enterprise re-assigning employees outside their base facility/office and/or bringing out/withdrawing from their respective facilities equipment and assets without compliance to the foregoing shall be subject to penalties provided in PEZA's Rules and Regulations, including, but not limited to suspension of incentives.
- ▶ A LOA shall be subsequently issued by PEZA on the basis of the required letter/attestation and documents submitted by the IT Enterprise.
- ▶ The IT Enterprise may proceed with the implementation of its COVID-19 response action/s while the LOA is in process with PEZA.
- ▶ All LOAs to be issued by PEZA under this MC shall be valid until 31 July 2020.
- ▶ In the event that the effectivity of this MC is extended, all LOAs issued under this MC shall be automatically extended up to the end of the validity period provided in the MC subsequently issued by PEZA.

Banks and Other Financial Institutions

Correspondent Banking Relationships

BSP Circular No. 1078 publishes MB Resolution No. 322 dated 27 February 2020 providing for the guidelines on correspondent banking relationships.

BSP Circular No. 1078 dated 9 March 2020

- ▶ The guidelines shall apply to covered persons engaged in correspondent banking or the provision of banking services by whose relationship can be domestic or foreign.
- ▶ A correspondent bank is a bank which processes and/or executes transactions for customers of a respondent bank, which is the direct customer of the correspondent bank.
- ▶ Forms of correspondent banking services may be traditional or non-traditional.
 1. Traditional correspondent banking includes the use of Relationship Management Facility or the system used for sending and receiving SWIFT messages; the use of NOSTRO or VOSTRO accounts; and transactions involving Counterparty Financial Institution or CFI.
 - ▶ A NOSTRO account is the account that a bank (i.e. accountholder, respondent bank) maintains with another bank (correspondent bank) to facilitate transactions
 - ▶ A VOSTRO account is the account that the bank (correspondent bank) holds or manages for another bank (respondent bank)
 2. Non-traditional correspondent banking, on the other hand, covers Nested correspondent banking relationships and Payable-through accounts.
 - ▶ A Nested or Downstream correspondent banking relationship, which refers to the use of a bank's correspondent relationship by a number of respondent banks through their relationships with the correspondent bank's direct respondent bank to conduct transactions and obtain access to other financial services
 - ▶ Payable-through accounts refer to a correspondent account that is used directly by third parties to transact business on their own behalf
- ▶ Correspondent Banks shall perform a risk assessment of the money laundering and/or terrorism financing risks in correspondent banking relationship in accordance with Part 9 of the MORB. It shall consider all relevant regulations including, but not limited to, nature of the services, profile and operating environment of the respondent bank.
- ▶ Correspondent Banks must perform credit due diligence (CDD) on respondent banks in the establishment of Relationship Management Applications (RMA) of NOSTRO/VOSTRO accounts and CFI relationships. The level of due diligence required depends on the type of transaction that will pass through the account, as summarized below:

CDD Requirement	RMAs		RMAs with Accounts		CFI
	Customer	Non-customer	NOSTRO	VOSTRO	
Customer Information	X	X	X	X	X
Identification Documents	X			X	X
Identification of the Ultimate Beneficial Owner	X			X	X
Management Structure	X			X	X
General Profile (reputation, major business activities, customers location, target market and customer base)	X			X	
Condition and quality of banking regulation and supervision in the respondent bank's country	X			X	
AML Questionnaire or Equivalent Document such as the Expanded Wolfsberg Questionnaire	X			X	X
Risk Assessment with corresponding AML Risk Score/ Rating	X			X	X

Senior Management Approval	X			X	X
Correspondent Banking Agreement or equivalent document	X		X	X	X
Sanction Screening	X	X	X	X	X

- ▶ For non-traditional correspondent banking, correspondent banks must understand the respondent bank's control framework and must perform a risk assessment of Nested relationships in addition to due diligence.
- ▶ On the other hand, correspondent banks must ensure the presence of a robust risk management system in Payable-through accounts. They must satisfy themselves that the respondent bank has performed customer due diligence obligations that have direct access to their accounts and that said bank is able to provide relevant customer due diligence information upon their request.
- ▶ Due diligence reviews must be conducted periodically. Banks shall develop a transaction monitoring system, which shall include detection scenarios (e.g. red flag indicators) and parameters specific to the correspondent banking activities.
- ▶ Entering or continuing correspondent relationship with shell banks is strictly prohibited.

Thrift Banks, Rural Banks and Cooperative Banks

BSP Circular No. 1079 dated 9 March 2020

- ▶ New minimum capital ratios:

Minimum Capital Ratio	Capital	% of Risk Weighted Assets
Common Equity Tier L (CET1) Ratio	CET1	At least 6.0%
Tier 1 Ratio	Tier 1	At least 7.5%
Capital Adequacy Ratio (CAR)	Qualifying Capital	At least 10.0 %

- ▶ Quarterly reports on the risk-based CAR shall be submitted to the Bangko Sentral ng Pilipinas (BSP) every 15th and 30th day from the end of the reference quarter for solo and consolidated bases, respectively. Only banks with subsidiary financial allied undertakings, which under the existing rules are required to prepare consolidated financial statements on a line-by-line basis, shall be required to submit a report on a consolidated basis.
- ▶ Stand-alone TBs, RBs and Coop Banks shall undergo an observation period of until 31 December 2021 to ensure that covered banks can meet the minimum capital ratios.
- ▶ A covered bank may be subject to prompt corrective action when the total CAR or Tier 1 level falls below the required minimum prescribed ratio. However, the Monetary Board may temporarily relieve a surviving bank in case of a bank merger or consolidation or when a bank is under rehabilitation from full compliance with the required capital ratios under such conditions as it may prescribe.

BSP Circular No. 1079 publishes MB Resolution No. 128 amending the Risk-Based Capital Adequacy Framework for Stand-Alone TBs, RBs and Coop Banks under Section 127 and Appendix 62 of the MORB.

BSP Circular No. 1082 publishes MB Resolution No. 423 providing for the reduction of reserve requirement ratios of deposit and deposit substitute liabilities of universal and commercial banks and non-bank financial institutions with quasi-banking functions effective 3 April 2020.

Reserve Requirement

BSP Circular No. 1082 dated 31 March 2020

- ▶ The rates of required reserves of banks shall be as follows:

Reservable Liabilities	Universal/ Commercial Banks	Thrift Banks	Rural/ Coop Banks
Demand Deposits	12%	4%	3%
NOW Accounts			
Savings Deposits (excluding basic deposit accounts)			
Time Deposits, Negotiable Certificate of Time Deposit (CTD), Long-Term Non-negotiable Tax Exempt CTDs			
Deposit Substitutes			
Peso deposits lodged under due to foreign banks		NA	NA
Peso deposits lodged under due to foreign banks		NA	NA

- ▶ Non-bank Institutions with Quasi-banking functions shall maintain reserves equivalent to 12% (formerly 18%) of deposit substitute liabilities, regardless of maturities except (a) borrowings from the BSP through the sale of government securities under repo agreements; (b) deposit substitutes arising from special financing programs of the government and/or international financial institutions; (c) interbank call loan transactions; and (d) bonds under Sec. 205-Q of the Manual of Regulations for which the reserve requirement shall be 4%.

Bureau of Customs

Express Shipments

Customs Administrative Order (CAO) No. 05-2020

CAO No. 05-2020 provides for customs clearance procedures on express shipments.

- ▶ The CAO covers Express Shipments carried as cargo under a Master Air Waybill ("MAWB") consigned to Air Express Cargo Operators ("AECO").
- ▶ A customs office shall be established in all international airports where AECOs have established offices or hubs.
- ▶ For the purpose of granting immediate release, Express Shipments shall be divided into 4 categories, namely:
 - ▶ Correspondence and Documents, which shall refer to those shipments which are Business, Inter-office or Personal ("BIP") in character and have no commercial value;
 - ▶ De Minimis Shipments, which shall refer to the value of goods for which no duty or tax is collected;
 - ▶ Low-Value, Dutiable and/or Taxable Express Shipments, which shall refer to goods with Free on Board ("FOB") or Free Carrier ("FCA") value of more than P10,000.00 but less than P50,000.00; and
 - ▶ High-Value Shipments, which shall refer to shipments with an FOB value of P50,000.00 and above.
- ▶ Two or more low-value non-document express consignment, which appears on the Consolidated Inward Foreign Cargo Manifest ("CIFCM") to have the same shipper and the same consignee, the aggregate value of which amounts to P50,000.00 or more, or its foreign currency equivalent value at the date of arrival of shipment, shall be treated as a single consignment and shall require the filing of a formal entry.
- ▶ The AECO shall be accredited with the Bureau of Customs ("BOC") before it can avail of the privileges for handling Air Express Shipments.

- ▶ The following importations shall not be entitled to immediate release as Express Shipment:
 1. Importations declared as “without commercial value”, “of no commercial value”, or with a specific amount but qualified by the phrase “for customs purposes” or analogous phrases;
 2. Goods subject to requirements or conditions imposed by the concerned regulatory agency, unless for personal use and within the limits allowed by regulations;
 3. Importations to be entered conditionally-free, for warehousing, for transit and/or admission to free zones.
- ▶ The following shall not be considered as Express Shipments:
 1. Prohibited and/or restricted goods under Philippine laws;
 2. Dangerous goods and/or hazardous substances;
 3. Valuable goods such as jewelry, works of art and the like;
 4. Animals, fishes and fowls (live or frozen);
 5. Foodstuffs and highly perishable articles;
 6. Human remains or cadavers; and
 7. Money (coins, cash, paper money and negotiable instruments equivalent to cash).
- ▶ CAO No. 05-2020 shall take effect 30 days from its publication in the Official Gazette or a newspaper of general circulation.

(Editor’s Note: CAO No. 5-2020 was published in The Manila Times on 5 March 2020)

Provisional Goods Declaration

CMO No. 07-2020

- ▶ The CMO covers all PGD to be processed under the formal entry system.
- ▶ Lodgment of PGD may be allowed in the following circumstances:
 1. When no regulatory permit, clearance or license has been presented at the time of lodgment, provided that the importer has filed his application for such permit, clearance or license, subject to the policy of the concerned regulatory agency;
 2. When the Tax Exemption Indorsement (“TEI”) from the Department of Finance (“DOF”), or the Tax-Exempt Certificate (“TEC”) or Authority to Release Imported Goods (“ATRIG”) from the BIR has not been issued yet, provided an application has already been filed at the time of lodgment; or
 3. Any other situation where the declarant lacks certain information or document to make a complete goods declaration, provided it is not due to the declarant’s negligence or fault, and that the mandatory information and documents are present.
- ▶ If the District/Subport Collector accepts a PGD, the duty and tax treatment of the goods shall not be different from that of goods with complete declaration.
- ▶ Tentative assessment of duties, taxes and other charges on goods covered by a PGD shall be completed upon final readjustment and submission by the declarant of the additional information or documentation required to complete the goods declaration.

(Editor’s Note: CMO No. 7-2020 took effect on 16 March 2020)

CMO No. 07-2020 lays down the interim procedure on PGD.

Conditionally Tax and Duty-Exempt Importations

CAO No. 06-2020 implements the conditionally tax and/or duty - exempt importations under Section 800 of the CMTA, excluding subsections (f) and (g).

CAO No. 06-2020

- ▶ CAO No. 6-2020 covers importations under Section 800 of the CMTA, excluding Subsection (f) on Returning Residents and OFWs and Subsection (g) on Shipments of Balikbayan Boxes, which are covered by separate CAOs and CMOs.
- ▶ All importations under Section 800 of the CMTA must secure a Tax Exemption Indorsement (TEI) from the DOF-RO, except for the aquatic products under subparagraph (1), balikbayan boxes under subparagraph (7), coffins and urns containing human remains under subparagraph (17), accompanied goods under subparagraph (8), and property marked diplomatic pouches/bags meeting the requirements of Article 27 of the Vienna Convention on Diplomatic Relations and Optional Protocols (1961).
- ▶ Subject to the submission of the necessary documents to the BOC, the following shall be tax and/or duty exempt:
 1. Aquatic products, such as fishes, crustaceans, mollusks, marine animals, seaweeds, fish oil, roe caught or gathered by vessels of Philippine registry;
 2. Equipment for use in the salvage of vessels or aircrafts, subject to posting of security and exportation of the said equipment within 6 months from the date of acceptance of goods declaration;
 3. Cost of repairs of vessels or aircrafts documented, registered or licensed in the Philippines, excluding the value of the goods used, made in foreign countries;
 4. Imported goods for repair, processing or reconditioning upon completion of the repair, processing or reconditioning, subject to the posting of security and conditioned for their exportation or payment of the corresponding duties, taxes and other charges within 6 months from the date of acceptance of the goods declaration;
 5. Medals, badges, cups, and other small goods bestowed as trophies or prizes, or those received or accepted as honorary distinction upon submission of proof evident on the goods themselves or that the same have been bestowed as trophies or prizes or accepted as honorary distinctions;
 6. Personal effects, toiletries, portable tools, theatrical costumes and similar effects of travelers or tourists, subject to a written commitment or security and conditioned for their exportation or payment of the corresponding duties, taxes and other charges within 3 months from the date of acceptance of the goods declaration, provided, that this exemption shall not apply to goods intended for other persons or for barter, sale, or hire;
 7. Personal and household effects and vehicles belonging to foreign consultants and experts hired by or rendering service to the government, and their staff or personnel and families accompanying them or arriving within a reasonable time before or after their arrival in the Philippines, in quantities and of the kind necessary and suitable to the profession, rank or position of the person importing said items, for their own use and not for barter, sale or hire, subject to posting of security and conditioned on the exportation thereof or payment of the corresponding duties, taxes and other charges within 3 months from the expiration of their term or contract;
 8. Professional instruments and tools of trade of persons coming to settle in the Philippines, including wearing apparel, domestic animals, and personal and household effects;
 9. Goods for public entertainment and display in public expositions or for exhibition or competition for prizes and devices for projecting pictures and parts thereof, subject to posting of security and conditioned for their exportation or payment of the corresponding duties, taxes and other charges within 3 months from the date of acceptance of the goods declaration;
 10. Technical and scientific films when imported by technical, cultural, and scientific institutions and not to be exhibited for profit;
 11. Goods for making or recording motion picture films brought by foreign film producers, directly and exclusively used for making or recording Motion Picture films on location in the Philippines, subject to posting of a security and conditioned for their exportation or payment of the corresponding duties, taxes and other charges within 3 months from the date of acceptance of the goods declaration;

12. Photographic and cinematographic films, which are underdeveloped and exposed outside the Philippines by resident Filipino citizens or by producing companies of Philippine registry;
 13. Importations for official use of foreign embassies, legations, and other agencies of foreign governments;
 14. Goods for donation to or for the account of the Philippine government or any duly registered relief organization not operated for profit, which is for free distribution among the needy, upon certification by the Department of Social Welfare and Development (“DSWD”) or the Department of Education (“DepED”), or the DOH;
 15. Containers, holders and other receptacles for export of locally-manufactured goods, subject to posting of security;
 16. Recovered goods and salvage of vessels shall be exempt from payment of import duties after 2 years from the date of filing of the Marine Protest or from the time when the vessel was wrecked or abandoned. Goods and salvage recovered within 2 years shall be dutiable; and
 17. Coffins or urns containing human remains, bones or ashes, used personal and household effects (not Merchandise which refer to commodities or goods that are held for sale or commercial purpose) of the deceased person, provided that the value of said coffins or urns and used personal or household effects does not exceed P150,000.00
- The following non-commercial samples shall be exempt from payment of import duty:
1. Samples of the kind, in such quantity and of such dimension or construction as to render them unsaleable or of no commercial value;
 2. Models not adapted for practical use;
 3. Samples of medicines, subject to the following conditions:
 - They are properly marked “SAMPLE-SALE PUNISHABLE BY LAW”, and these words should be clearly and permanently printed, not merely pasted on the products’ label and/or box;
 - They are imported for the purpose of introducing a new product in the Philippine market;
 - They are imported only once in such quantity sufficient for such purpose;
 - They are imported by a person duly registered and identified to be engaged in that trade;
 - The importation of said sample of medicine was previously authorized by the Secretary of Health and the Secretary of Finance;
 - Such samples are new medicines not available in the Philippines as may be determined by the Secretary of Health or his duly authorized representative; and
 - They are not in commercial sizes nor shipped in bulk.
 4. Single importations of readily and easily identifiable commercial samples the value of which does not exceed FCA value of P50,000, subject to posting of a security, and conditioned on the exportation of said samples, within 3 months from the date of the acceptance of the goods declaration or in default thereof, forfeiture of the said security.
 5. Animals for the purpose of scientific, experimental breeding, zoological and national defense purposes, except racehorses;
 6. Plants for scientific, experimental propagation, botanical and national defense purposes, provided that no live trees, shoots, plants, moss and bulbs, tubers, and seeds for propagation purposes may be imported under Section 800, except by order of the government or other duly authorized institutions;
 7. Economic, technical, vocational, scientific, philosophical, historical and cultural books or publications, and religious books;
 8. Educational, scientific, and cultural materials covered by international agreements or commitments binding upon the Philippine government upon certification by the Department of Education or other authorized entity;
 9. Philippine goods previously exported from the Philippines and returned without having been advanced in value, or improved in condition, and upon which no drawback or bounty has been allowed, including instruments and implements, tools of trade, machinery and equipment, used abroad by Filipino citizens in the pursuit of their business, occupation or profession;

10. Foreign goods previously imported when returned after having been exported and loaned for use temporarily abroad solely for exhibition, testing and experimentation, for scientific or educational purposes;
 11. Aircraft, parts, supplies, etc. imported by and for the use of scheduled airlines operating under congressional franchise provided such goods or supplies are not locally available in reasonable quantity, quality and price and are necessary or incidental to the proper operation of the scheduled airline importing the same;
 12. Machineries, equipment, tools for production, plans to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals, and transportation and communications facilities, subject to the following conditions:
 - ▶ They are imported by and for the use of new mines and old mines which resume operations;
 - ▶ They are certified to as such by the Secretary of Environment and Natural Resources, upon the recommendation of the Director of Mines and Geosciences Bureau;
 - ▶ The privilege shall lapse 5 years from the first date of actual commercial production of saleable mineral products; and
 - ▶ Such goods are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mine.
 13. Aircrafts imported by agro-industrial companies to be used by them in their agriculture and industrial operations or activities, spare parts and accessories thereof duly certified by the Secretary of Agriculture or the Secretary of Trade and Industry;
 14. Spare parts of vessels or aircrafts of foreign registry engaged in foreign trade when brought into the Philippines exclusively as replacements or for the emergency repair, upon proof that such spare parts shall be utilized to secure the safety, seaworthiness or airworthiness of the vessel or aircraft, to enable it to continue its voyage or flight;
 15. Goods exported for repair, processing or reconditioning without having been substantially advanced in value and subsequently re-imported in its original form and in the same state;
 16. Trailer chassis when imported by shipping companies for their exclusive use in handling containerized cargo subject to posting of security; and
 17. Personal and household effects including 1 motor car of Philippine diplomats or consuls subject to the following conditions:
 - ▶ The goods should be limited to personal and household effects provided that the aggregate assessed value of the personal and household effects shall not exceed 30% of the total amount received by the officer or employee in salary and allowances during the latest assignment abroad, but not to exceed 4 years;
 - ▶ It should include only 1 motor car registered in the name of the officer or employee ordered or purchased prior to the receipt by the mission or consulate of the order of recall;
 - ▶ The exemption shall not be availed of more than once every 4 years; and
 - ▶ The officer or employee concerned must have served abroad for not less than 2 years.
- ▶ The following non-commercial samples shall be exempt from payment of import duty:
 1. Those provided for under CMTA;
 2. Those granted to government agencies, instrumentalities or government-owned or controlled corporations (GOCCs) with existing contracts, commitments, agreements, or obligations with foreign countries requiring such exemption;
 3. Those granted to international institutions, associations or organizations entitled to exemption pursuant to agreements or special laws; and
 4. Those that may be granted by the President upon prior recommendation of the National Economic and Development Authority ("NEDA") in the interest of national economic development.
 - ▶ This CAO shall take effect 30 days from publication at the Official Gazette or a newspaper of general circulation.

(Editor's note: CAO No. 06-2020 was published at The Manila Times on 1 April 2020)

Capital Gains Tax Exemption under Tax Treaties

In determining whether the assets of a Philippine corporation consist principally of immovable property in order to claim capital gains tax exemptions under the Philippines-US Tax Treaty, only the cost of the assets, and not their fair market value, shall be considered.

Since the real property only constituted 17.80% of the total assets, the gains from the sale of the Philippine corporation's shares are taxable only in the United States where the seller is a resident pursuant to the Philippines-US Tax Treaty.

Commissioner of Internal Revenue vs. Dole Food Company, Inc.

CTA (*En Banc*) Case No. 1921 promulgated 3 February 2020

Facts:

Respondent Dole Food Company, Inc. ("DFCI") filed a claim for refund of erroneously paid capital gains tax (CGT) on its sale of shares of stock in Dole Philippines, Inc. ("DPI") to Dole Asia Holdings Pte. Ltd. ("DAHL") in February 2013. Based on their Share Transfer Agreement, DFCI, a US entity, sold all its shares in DPI to DAHL, a Singaporean company.

On 4 March 2013, DFCI filed a Tax Treaty Relief Application (TTRA) with the BIR requesting for confirmation that the sale of DPI shares to DAHL is exempt from CGT pursuant to the Philippines - US Tax Treaty.

On 21 March 2013, DFCI filed its CGT return, but paid CGT on the sale of shares.

On 1 October 2014, DFCI filed the refund claim to recover the erroneously paid CGT. Due to the BIR's inaction, DFCI elevated the case to the CTA on a Petition for Review.

The CTA 3rd Division granted the application for refund. Upon denial of its Motion for Reconsideration, the BIR elevated the case to the CTA *En Banc*.

At the CTA *En Banc*, the BIR argued that DFCI is not entitled to a refund due to its failure to substantiate its claim at the administrative level, particularly the non-submission of its 2012 financial statements. It also alleged that the Property, Plant and Equipment must be based on the fair market value at the time of sale and not on cost.

DFCI invoked the exemption under the treaty and averred that even the CIR, through the ITAD, had confirmed the exemption of the Share Transfer Agreement from CGT.

Issue:

1. Can DFCI submit supporting documents at the CTA to support the refund even if these were not presented at the BIR?
2. Is DFCI entitled to a refund of erroneously paid CGT?

Ruling:

1. Yes. The CTA held that the BIR was mistaken in its assertion that only those evidence, which DFCI submitted in the administrative claim for refund, may be presented at the CTA. A claimant may also present new or additional evidence that will solidify and further corroborate its claim for refund, even if this was not presented at the administrative level.
2. Yes. The CTA *En Banc* sustained the CTA Division, which ruled that real property only constituted 17.80% of DPI's assets, hence, giving rise to the application of the treaty provisions on CGT exemption. The gains from the sale of DPI shares by DFCI to DAHL were taxable only in the United States where DFCI is a resident. Thus, the CGT paid to the BIR on the transaction was erroneous. Hence, the argument that the value of the Property, Plant and Equipment must be based on fair market value at the time of sale and not on cost is irrelevant and immaterial to the case.

Demurrage and detention fees do not form part of an international sea carrier's GPB, which are subject to the 2.5% preferential rate, and instead, form part of the carrier's gross income subject to the regular income tax rate.

Demurrage and Detention fees

Association of International Shipping Lines, Inc., APL Co. PTE Ltd. and Maersk-Filipinas, Inc. vs. Secretary of Finance and Commissioner of Internal Revenue

Supreme Court First Division G.R. No. 222239 promulgated 15 January 2020

Facts:

Revenue Regulations (RR) No. 15-2013, which were issued to implement certain provisions of Republic Act (RA) No. 10378 amending the Tax Code, provide that both demurrage and detention fees are subject to regular corporate income tax.

Petitioners Association of International Shipping Lines, Inc. and Maersk-Filipinas, Inc. challenged the regulations and argued that RR 15-2013 unduly widened the scope of RA 10378 by imposing additional taxes on international shipping carriers, which is not authorized under the law.

Petitioners argued that demurrage and detention fees are not income, but penalties imposed by the carrier on the charterer, shipper, consignee, or receiver, as the case may be, to allow the carrier to recover losses or expenses associated with or caused by the undue delay in the loading and/or discharge of the latter's shipments from the containers. Petitioners added that these are akin to damages, and that assuming these may be treated as income, they are taxable only if they form part of GPB and taxed at the preferential rate of 2.5%.

The SOF and CIR countered that RR 15-2013 does not expand the provisions of RA 10378, but simply clarified what constitutes GPB such that anything outside the definition of GPB is subject to the regular income tax rate for resident foreign corporations.

Issue:

Are demurrage and detention fees subject to the regular income tax rate or to the preferential tax rate for GPB?

Ruling:

Demurrage and detention fees are subject to the regular corporate income tax rate and not to the preferential tax rate for GPB.

"Gross Philippine Billings" is defined under the Tax Code to mean "gross revenue whether for passenger, cargo or mail originating from the Philippines up to the final destination, regardless of the place of sale or payments of the passage or freight documents."

GPB covers gross revenue derived from transportation of passengers, cargo and/or mail originating from the Philippines up to the final destination. Any other income, therefore, is subject to the regular income tax rate.

Demurrage fee is the allowance or compensation given to the master or owners of a ship by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter-party. It is only an extended freight or reward to the vessel, in compensation for the earnings the carrier is improperly caused to lose.

Detention occurs when the consignee holds on to the carrier's container outside of the port, terminal, or depot beyond the free time that is allotted. Detention fee is charged when import containers have been picked up, but the container (regardless if it is full or empty) is still in the possession of the consignee and has not been returned within the allotted time. Detention fee is also charged for export containers in which the empty container has been picked up for loading, and the loaded container is returned to the steamship line after the allotted free time.

The exclusion of demurrage and detention fees from the preferential 2.5% rate is proper since they are not considered income derived from transportation of persons, goods and/or mail.

Demurrage and detention fees form part of an international sea carrier's gross income for they are acquired in the normal course of trade or business. They fall within the definition of "gross income" - the former is considered as rent payments for the vessel; and the latter, compensation for use of a carrier's container.

These fees form part of the international sea carrier's gross income, which is subject to the regular income tax rate.

Directors'/Trustees' Meetings

SEC MC No. 6 lays down the guidelines on the attendance and participation of directors, trustees, stockholders, members, and other persons of corporations in regular and special meetings through teleconferencing, video conferencing, and other remote or electronic means of communication.

SEC MC No. 6 Series of 2020 dated 12 March 2020

- ▶ Directors or trustees who cannot physically attend or vote at board meetings can participate and vote through remote communication, such as videoconferencing, teleconferencing, or other alternative modes of communication, that allow them reasonable opportunities to participate. However, directors or trustees cannot attend or vote by proxy at board meetings.
- ▶ If a director or trustee intends to participate in a meeting through remote communication, he/she shall notify in advance the Presiding Officer and the Corporate Secretary of his/her intention. The Corporate Secretary shall note such fact in the Minutes of the Meeting.
- ▶ Corporations may issue their own internal procedures for the conduct of board meetings through remote communication or other alternative modes of communication to address administrative, technical and logistical issues.
- ▶ Unless the Revised Corporation Code or the articles of incorporation or bylaws of a corporation provide for a greater majority, a majority of the directors or trustees as stated in the articles of incorporation shall constitute a quorum. A director or trustee who participates through remote communication, shall be deemed present for the purpose of attaining quorum.
- ▶ The Corporate Secretary shall send the notice of the meeting to all directors or trustees in accordance with the manner of giving notice as provided in the bylaws or by board resolution.
 1. Notice of meetings may be sent to all directors or trustees through electronic mail, messaging service or such other manner as may be provided in the bylaws or by board resolution.
 2. Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least 2 days prior to the scheduled meeting, unless a longer time is provided in the bylaws.
 3. A director or trustee may waive this requirement, either expressly or impliedly.
- ▶ At the start of the meeting, the Presiding Officer shall instruct the Corporate Secretary to make a roll call. Every attendee shall state for the record the following: (a) Full name and position; (b) Location; (c) Confirmation that he/she can clearly hear and/or see the other attendees; (d) Confirmation that he/she received the Notice of the Meeting including the agenda and materials; and (e) Specify the device being used (i.e., smartphone, tablet, laptop, desktop, television, etc.).
- ▶ In case of a need to vote in any item or matter in the agenda, the Presiding Officer shall direct the Corporate Secretary to note the vote of each director or trustee. The director or trustee participating in the meeting via remote communication may cast his vote through electronic mail, messaging service or such other manner as may be provided in the internal procedures. The vote shall be sent to the Presiding Officer and the Corporate Secretary for notation.
- ▶ When so provided in the bylaws or by majority of the board of directors, stockholders or members who cannot physically attend at stockholders' or members' meetings may participate in such meetings through remote communications or other alternative modes of communication.
- ▶ If a stockholder or member intends to participate in a meeting through remote communication, he/she shall notify in advance the Presiding Officer and the Corporate Secretary of his/her intention. The Corporate Secretary shall note such fact in the Minutes of the meeting.
- ▶ For the convenience of their stockholders and members, corporations shall issue their own internal procedures embodying the mechanisms for participation in meetings and voting through remote communication or in absentia.
- ▶ Unless otherwise provided in the Revised Corporation Code or in the bylaws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of nonstock corporations. A stockholder or member who participates through remote communication or in absentia shall be deemed present for purposes of quorum.
- ▶ The right to vote of stockholders or members may be exercised in person, through a proxy, or when so authorized in the bylaws, through remote communication or in absentia.
- ▶ The right to vote of stockholders or members may be exercised also through remote communication or in absentia when authorized by a resolution of the majority of the board of directors, provided, that the resolution shall only be applicable for a particular meeting.

- ▶ In the election of directors, trustees and officers of corporations vested with public interest, stockholders and members may vote through remote communication or in absentia, notwithstanding the absence of a provision in the bylaws of such corporations.
- ▶ The Secretary shall send out the notices of the election/meeting to all stockholders or members in accordance with the manner of giving notice as stated in the bylaws.
 1. Written notice of regular meetings may be sent to all stockholders or members through electronic mail or such other similar manner as may be stated in the bylaws.
 2. Notice of regular meetings which should state the date, time and place of the meeting must be sent to every stockholder or member at least 21 days prior to the scheduled meeting, unless a longer time is provided in the bylaws.
 3. Notice of special meetings, which should state the date, time and place of the meeting, must be sent to every stockholder or member at least 1 week prior to the scheduled meeting, unless a longer time is provided in the bylaws.
 4. In case of postponement of stockholders' or members' regular meetings, written notice shall be sent to all stockholders or members of record at least 2 weeks prior to the date of the meeting.
- ▶ In case the election or meeting was conducted through teleconferencing or any other similar means, a visual and audio recording of the election or meeting should be secured. The Secretary is duty-bound to safe-keep and perpetuate in updated data storage equipment or facility the visual and audio recordings.
- ▶ The presiding officer shall call and preside the stockholders' or members' meetings, whether regular or special, at the principal office of the corporation as provided in the articles of incorporation, or, if not practicable, in the city or municipality where the principal office of the corporation is located.
- ▶ Upon approval of this circular, corporations may already conduct their board meetings and stockholders' and members' meetings through remote communication or other alternative modes of communication for the limited purpose of approving the provisions in their bylaws or internal procedures, which will govern participation in board meetings and stockholders' and members' meetings by means of remote communication or other alternative modes of communication.

Documentary Stamp Tax on Advances

San Miguel Energy Corporation vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case Nos 1906 and 1907 promulgated on 24 February 2020

Facts:

On 19 July 2011, the Supreme Court, in the case of Commissioner of Internal Revenue vs. Filinvest Development Corporation, ruled that instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.

Consequently, the BIR, on 6 October 2011, issued Revenue Memorandum Circular (RMC) No. 48-2011, circularizing the relevant excerpts of the Filinvest case decision and enjoining all employees engaged in the audit and review of tax cases "to assess deficiency DST, if warranted, on these kinds of transactions."

The BIR issued a Notice of Informal Conference (NIC) against San Miguel Energy Corporation (SMEC), for taxable year 2010. Per its NIC, the BIR found certain deficiency taxes due from SMEC, which include DST on advances from related parties.

SMEC paid under protest the alleged deficiency DST, but subsequently filed a claim for refund or tax credit with the BIR for alleged DST erroneously and/or illegally collected for 2010. Due to inaction of the CIR, SMEC filed a Petition for Review with the CTA.

At the CTA, the Court in Division partially granted SMEC's claim for refund. Aggrieved, both the CIR and SMEC elevated the matter to the CTA *En Banc*.

The DST is actually an excise tax, as it is imposed on the transaction rather than on the document. Thus, even while the subject document was not shown, or no debt instrument was identified by the BIR, DST may still be imposed, as long as the transactions were clearly established.

Issue:

1. Whether the Filinvest case and RMC No. 48-2011 may be applied retroactively against SMEC
2. Whether DST may be imposed on the advances extended to SMEC on the basis of a mere Note appearing in its 2010 audited financial statements

Ruling:

1. Yes. The CTA *En Banc* upheld the Court in Division in ruling that there was no previous doctrine, which was overruled by the Supreme Court in the Filinvest case. The decisions of the Court of Appeals and the CTA cited by SMEC cannot be deemed to have enunciated a prior doctrine or one prevailing at the time the subject advances were extended. Judgments of lower courts and other collegiate courts bind only the parties to the specific cases, unlike decisions of the Supreme Court which are universal in their scope and application, as well as mandatory in character.

The CTA *En Banc* also upheld the Court in Division in ruling that the Tax Code provision on the non-retroactivity of rulings, which are prejudicial to the taxpayer does not apply to RMC No. 48-2011. According to the CTA *En Banc*, the fact that RMC No. 48-2011 “enjoined all employees engaged in the audit and review of tax cases to assess deficiency DST, if warranted, on these kinds of transactions” does not mean that the BIR made a specific ruling and has overruled or reversed a prior one, as the assessment of deficiency DST, if warranted, would merely be a necessary consequence of the ruling in the Filinvest case.

2. Yes. The DST is actually an excise tax, as it is imposed on the transaction rather than on the document. Thus, there is no basis in the assertion that a DST is literally a tax on a document. Even while the subject document was not shown, or no debt instrument was identified by the BIR, DST may still be imposed as long as the transactions were clearly established. Significantly, SMEC never denied the existence of the subject transactions to which the CIR imposed the DST, nor did it deny being a party to the transactions.

Considering the existence of the subject transactions, the Court *En Banc* upholds the imposition of the DST on the said transactions based on SMEC’s Audited Financial Statements (AFS) and the Notes to the AFS. Otherwise, the taxpayer may circumvent the law on DST by simply hiding the corresponding and/or supporting document/s.

Excise Tax on Heated Tobacco and Vapor Products

RMC No. 24-2020 provides for the transitory procedures in complying with the administrative requirements of RA No. 11346, imposing Excise Tax on Heated Tobacco and Vapor Products, as further amended by RA 11467.

RMC No. 24-2020 issued on 6 March 2020

- In line with the introduction of Heated Tobacco Products and Vapor Products under the category of Tobacco Products, which are subject to Excise tax, the following administrative requirements should be complied with:
 1. Amend the Registration with the BIR to include “EXCISE TAX” among the tax types;
 2. Secure a Permit to Engage in business as a Manufacturer, Importer, or Dealer/Trader of Heated Tobacco Products and Vapor Products with the Excise LT Regulatory Division (ELTRD);
 3. Assign an Assessment Number to be provided by the ELTRD;
 4. Secure from the ELTRD, a Permit to Import and an Authority to Release Imported Goods (ATRIGs) in case of importation and pay the Excise Tax using BIR Form No. 2200-T Excise Tax Return for Tobacco Products and corresponding Alphanumeric Tax Codes (ATC);
 5. Request for Internal Revenue Strip Stamps pursuant to Revenue Regulations (RR) No. 3-2006 dated January 3, 2006 to include Heated Tobacco Products and Vapor Products, which are identified under Tobacco Products;
 6. Register New and Existing Brands of Tobacco Products;
 7. Fill up the prescribed Excise Taxpayer’s Removal Declaration (ETRD) for all removals of Heated Tobacco Products and Vapor Products in case of Manufacturer; and
 8. Maintain Official Registry Books (ORBs) and such other forms or records that may be prescribed by this Bureau.

BSP Circular No. 1081 publishes MB Resolution No. 1683 providing for the amendments to the regulations governing the Personal Equity and Retirement Account (PERA).

Personal Equity and Retirement Account (PERA)

BSP Circular No. 1081 dated 4 March 2020

- ▶ A PERA Administrator shall have a net worth of at least Php100M. Net worth shall refer to the total unimpaired paid-in capital, surplus and undivided profits net of: (1) the required basic security deposit from the Administrator; (2) total outstanding unsecured credit accommodation, both direct and indirect, extended to DOSRI; and (3) other capital adjustments as may be required by the BSP.
- ▶ Security deposit for the faithful performance of Administrator's duties shall hold eligible government securities, equivalent to 0.5% (formerly 1%) of the total volume of PERA assets administered, earmarked in favor of the BSP.
- ▶ The base amount for the basic security deposit shall be the PERA assets reported as of the end of the calendar quarter.
- ▶ An Administrator, which incurs deficiency within the quarter, shall have a 30-day grace period (formerly 1 week) to comply with the required basic security deposit.
- ▶ The Administrator shall fully disclose to the potential contributor, the option to either become a self-custodian or to appoint a 3rd-party custodian of his PERA funds, as well as the option to appoint an investment manager.
- ▶ PERA assets arising from the sale of investment product/s shall be transferred to another PERA investment within 15 calendar days (formerly 2 working days) from withdrawal thereof.
- ▶ In the event of suspension or revocation of an Administrator, the transfer of PERA assets shall be made to the new Administrator within 15 calendar days (formerly 2 working days) from receipt of the contributor's advice.

Procedure on Real Property Tax Assessments

A claim for exemption is actually an act of assailing the correctness of the assessment. As such, payment under protest under Section 252 (a) of the LGC should first be complied with before a city treasurer can act on the protest.

National Grid Corporation of the Philippines vs. Central Board of Assessment Appeals, Local Board of Assessment Appeals of the City of Batangas, Guadalupe Joy A. Tumaming, in her official capacity as the City Assessor of Batangas

CTA (*En Banc*) Case No. 1963 promulgated 12 February 2020

Facts:

Respondent City Assessor of Batangas assessed Petitioner National Grid Corporation of the Philippines ("NGCP") for deficiency real property tax (RPT) for 2014 pertaining to 31 parcels of land in Barangay Mahabang Parang in Batangas City, which were classified as industrial lots, with assessment levels ranging from 25% and 30% of the fair market value (FMV). The City Assessor subsequently issued separate assessments for 15 additional parcels of land and buildings declared in the name of National Transmission Corporation (Transco). These were classified as industrial lots and variedly assessed between 25% and 75% of the FMV. Transco forwarded the assessments to NGCP.

NGCP filed with the Local Board of Assessment Appeals (LBAA) two separate petitions, which were later consolidated, questioning the deficiency RPT assessments. The subject properties were, thereafter, classified as industrial, and the assessment levels were reduced to 10% of the FMV.

NGCP later manifested that it would no longer challenge the 10% assessment level for industrial land as it has already settled the RPTs due thereon. However, NGCP insisted that properties classified as industrial buildings and described as tower poles under their respective tax declarations are machinery exempt from RPT pursuant to Section 9 of Republic Act 9511, the law granting NGCP its franchise.

The LBAA dismissed NGCP's arguments and ordered it to pay the deficiency RPT on the questioned properties. Aggrieved, NGCP appealed the case to the Central Board of Assessment Appeals (CBAA).

The CBAA dismissed the appeal due to, among others, NGCP's non-compliance with the requirement of payment of the deficiency RPT prior to protesting the assessment.

Upon receipt of the adverse decision, NGCP filed a Petition for Review at the CTA *En Banc*. It argued, among others, that it is liable only to the 3% franchise tax under RA 9511 and no other national or local tax can be imposed on it. Moreover, it averred that it is not required to pay under protest before appealing to the LBAA as Section 226 of the Local Government Code (LGC) only requires that an appeal must be filed within 30 days from receipt of the written notice of assessment issued by the City Assessor.

The City Assessor insisted that failure to pay rendered its administrative protest without any effect. It added NGCP is not exempt from RPT because Transco, not NGCP, is the actual possessor and user of the subject properties.

Issue:

Is NGCP required to pay under protest the deficiency RPT assessments?

Ruling:

Yes. Citing the Supreme Court case of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*, GR 171586 promulgated on 25 January 2010, the CTA said a claim for exemption is actually an act of assailing the correctness of the assessment. As such, payment under protest under Section 252 (a) of the LGC should first be complied with before a city treasurer can act on the protest.

Where a taxpayer or person with legal interest over the property also questions the reasonableness of an assessment, as in the case of NGCP, it must first pay the assessed amount under protest. If the protest is denied or not acted upon within 60 days from filing, NGCP may elevate the case to the LBAA, which has 120 days from the date of receipt of such appeal to render a decision. An aggrieved party may appeal with the CBAA within 30 days. Failure to pay under protest deprived the CBAA with jurisdiction to even entertain the appeal.

Procedure on Tax Assessments

The PAN is part of due process. It gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without need for the issuance of a FAN. The use of the word "shall" in Revenue Regulations No. 12-99, as amended, describes the mandatory nature of the service of the PAN.

Script2010, Inc. vs. Commissioner of Internal Revenue

CTA Case No. 9415 promulgated on 17 February 2020

Facts:

The CTA affirmed with modifications the income tax, VAT and expanded withholding tax (EWT) assessments issued by Respondent Commissioner of Internal Revenue (CIR) against Petitioner Script2010, Inc. (S2I) for calendar year (CY) 2011.

The instant case involves the motions for partial reconsideration filed by both S2I and the CIR.

In his motion for reconsideration, the CIR cites the following grounds: (a) the CTA erred in ruling that the CIR's right to assess S2I for deficiency VAT for the first, second and third quarters for CY 2011 and deficiency EWT for the months of January to November of CY 2011 had already prescribed; (b) the CTA erred in cancelling the assessment on the unaccounted expenses for lack of factual basis; (c) the CTA erred in finding that it was improper for the CIR to disallow S2I's excess tax credit; and (d) the CTA erred in cancelling the deficiency VAT on unaccounted expenses.

On the other hand, S2I reiterates that the CIR's deficiency tax assessments should be cancelled and withdrawn for having been issued in violation of its right to due process of law. S2I claims that the CIR failed to properly observe the mandatory fifteen-day period from receipt of the PAN within which the S2I may reply before issuing a Formal Letter of Demand (FLD)/ FAN.

Issue:

Did the CIR fail to properly observe the mandatory 15-day period from receipt of the PAN within which S2I may reply before issuing a FLD/FAN?

Ruling:

Yes. Based on Section 228 of the Tax Code, as amended, and Section 3.1.2 of Revenue Regulations (RR) No. 12-99, as amended, the CIR or his duly authorized representative, after the issuance of the PAN, is duty bound to wait for the expiration of 15 days from the date of receipt. If, during the said period, the taxpayer failed to respond to the PAN, it is only, then, that the CIR or his duly authorized representative can consider the taxpayer in default, and thus, cause the issuance and service of a FLD and FAN. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

The PAN is part of due process. It gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time, without need for the issuance of a FAN. The use of the word "shall" in subsection 3.1.2 of RR 12-99 describes the mandatory nature of the service of the PAN.

In this case, S2I received the PAN on 29 December 2014. The 15-day period to take action on the PAN starts to run not from the CIR's issuance, but from S2I's receipt. Hence, counting 15 days from the date of receipt of the PAN on 29 December 2014, S2I had until 13 January 2015 to protest or respond to the PAN. However, on 8 January 2015, the CIR prematurely issued the FLD/FAN, thereby resulting in the denial of due process on the part of S2I. Apparently, the CIR failed to properly observe the procedure laid down under Section 228 of the Tax Code, as amended, in relation to RR. No. 12-99, as amended.

In disregarding S2I's right to be heard with regard to its positions or arguments against the PAN, the CIR clearly violated S2I's right to due process law.

Due to failure to state the due dates for the payment of the deficiency taxes in the FAN/FLD and the definite amount of taxes to be paid, the assessments cannot be considered ripe for enforcement and the obligation for such deficiency taxes may not be deemed legally demandable. Thus, the tax assessments are void.

Commissioner of Internal Revenue vs. Megabucks Merchandising Corp.

CTA (*En Banc*) Case No. 1974 promulgated 12 February 2020

Facts:

Petitioner CIR assessed Respondent Megabucks Merchandising Corp. (MMC) for various deficiency taxes for calendar year 2010. MMC protested the Final Assessment Notice/Formal Letter of Demand (FAN/FLD) and due to the inaction by the BIR, filed a Petition for Review with the CTA.

The CTA 2nd Division cancelled the deficiency assessments, ruling that the FAN/FLD issued on 10 September 2015 did not contain the due date for the payment of the tax assessments. Citing the Supreme Court case of *CIR vs. Pascor Realty and Development Corporation, GR 128315 promulgated on 29 June 1999*, the CTA Division held that an assessment must not only contain a computation of the tax liabilities but also a demand for payment within a prescribed period.

Aggrieved, the BIR elevated the case to the CTA *En Banc*, where it argued that it complied with all the requirements of a valid assessment, including the fixing of the amount of the tax liability and corresponding surcharge. It insisted that the modification of deficiency and delinquency interests depending on the date of payment as reflected in the FAN/FLD is allowed under Sec. 249 of the BIR.

The BIR also averred that MMC executed five notarized waivers and as such, the period to assess was extended to 31 December 2015. Assuming that the waivers were defective, the BIR argued that MMC could not benefit from such defect, following the SC's ruling in *CIR vs. Next Mobile, GR 212825 promulgated on 7 December 2015*. Moreover, since due process was observed, the BIR posited that MMC is already bound by the FAN/FLD.

MMC argued that without specifying the due dates for payment, the tax liability is subject to change depending on the date of payment, which nullifies the FAN/FLD.

Issue:

1. Is the assessment valid?
2. Was the prescriptive period extended with the execution of the waivers?

Ruling:

1. No. In Part 1 of the FLD, the BIR requested MMC to pay its deficiency tax liabilities within the time shown in the enclosed assessment notice. However, the corresponding assessment notices did not have the due dates. As the BIR failed to state the due dates for the payment of the deficiency taxes and the definite amount of taxes to be paid, the FAN/FLD cannot be considered ripe for enforcement against MMC and the obligation for such deficiency taxes may not be deemed legally demandable. The CTA *En Banc* also ruled that the FLD states that both the amount due and its resultant interest will be adjusted if paid beyond 25 September 2010, contrary to the BIR's claim that only the interest will be modified.
2. No. While the CTA *En Banc* considered as valid the first two waivers, the third waiver was void as there was no proof that it was accepted by MMC. As the third waiver was void, the prescriptive period to assess was not further extended when it ended on 30 June 2014 with the execution of the second waiver.

In this case, the CTA *En Banc* held that the BIR and MMC were not equally at fault. The infirmity of the third waiver stemmed from the BIR's failure to furnish MMC with a copy of the third accepted waiver. Had the BIR been circumspect in ensuring that MMC received the third waiver bearing the CIR's written consent, the CTA ruled that the fourth and fifth waivers could have possibly stretched the period to assess until 15 December 2015.

Tax Refunds

Compensatory interest or the legal interest imposed by the courts on a judgement award in favor of a party litigant, is considered a form of penalty or indemnity for damages and cannot be considered as taxable income. Thus, the legal interest should not have been subjected to FWT rate of 20% based on Section 24 (B) (1) of the Tax Code, as amended.

Emmanuel C. Oñate. vs. Commissioner of Internal Revenue

CTA Case No. 9498 promulgated on 19 February 2020

Facts:

Petitioner Emmanuel C. Oñate (Oñate) is a resident citizen with residential address in Makati City. On 28 November 2014, the Land Bank paid Oñate the judgment award rendered in the latter's favor pursuant to the Supreme Court case entitled "Land Bank of the Philippines vs. Emmanuel C. Oñate". The said payment represents the judgment award less the final tax withheld on interest / yield from bank deposits / deposit substitutes.

On 4 November 2016, Oñate filed a written claim for refund or tax credit pursuant to Section 229 of the Tax Code, as amended, for having been collected erroneously by the BIR. There being no action on the part of the CIR, Oñate appealed to the CTA.

Issue:

Is Oñate entitled to the refund of taxes erroneously withheld from the judgment award rendered in his favor, as well as to payment of legal interest on the same from the time of delay until fully paid, attorney's fees and other expenses of litigation?

Ruling:

Yes. For a claim for tax refund of erroneously collected taxes to prosper, there must be compliance with the requisites imposed by Sections 204 (C) and 229 of the Tax Code, as amended. The following must be established by the taxpayer-applicant:

- ▶ There must be erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected
- ▶ The claim for refund has been duly filed with the CIR within 2 years after the payment of tax or penalty; and
- ▶ The suit or proceeding is instituted with the CTA within 2 years from the date of payment of the tax or penalty.

An erroneous or illegal tax is defined as one levied without statutory authority or upon property not subject to taxation or by some officer having no authority to levy the taxes, or one which in some other similar respect is illegal. In order to determine if there was indeed an erroneous collection of tax, and that the legal interest imposed on the judgment award is not subject to tax, it is first necessary to ascertain the nature of the sum sought to be taxed, i.e. the legal interest imposed on the judgment award. This, in turn, will determine if the subject legal interest is taxable or not.

In the case of *Bympha S. Odiamar vs. Linda Odiamar Valencia*, the Supreme Court stated that there are two types of interest imposed on a judgment award. Interest imposed upon a monetary judgment can either be monetary interest or one which was expressly stipulated in writing, or compensatory interest, or one which is imposed by law or the courts as penalty or indemnity for damages.

A perusal of the judgment award rendered in favor of Oñate shows that the legal interest imposed on the judgment award subject of this case involves compensatory interest as it was imposed as a form of penalty or indemnity for damages, as opposed to compensation fixed by the parties for the use or forbearance of money.

Considering that compensatory interest, or the legal interest imposed by the courts on a judgment award in favor of a party litigant, is considered a form of penalty or indemnity for damages, it cannot rightfully be considered as taxable income. Thus, the subject legal interest awarded to Oñate should not have been subjected to FWT rate of 20% based on Section 24 (B) (1) of the Tax Code, as amended.

On Oñate's claim for legal interest to be imposed on the amount sought to be refunded, there is no showing that there is a statutory provision, which directs or authorizes the payment of interest on the amount to be refunded to the taxpayer, nor is there any allegation or showing that the collection of tax sought to be refunded was attended with arbitrariness. In the absence of proof to show that either of the two circumstances is present in this case, the CTA cannot order the payment of interest on the taxes sought to be refunded.

Section 112(A) of the NIRC, as amended, does not require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales. It is sufficient that the input taxes bear a direct or indirect connection with a taxpayer's zero-rated sales.

Foreign currency remitted as payment for services must, likewise, be supported by VAT zero-rated official receipts.

Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue

CTA (2nd Division) Case Nos. 8720, 8736, 8754 and 8767 promulgated 14 February 2020

Facts:

Petitioner Deutsche Knowledge Services Pte. Ltd., ("DKSP") filed a claim for refund of unutilized input VAT for 2012. Due to inaction, DKSP filed a Petition for Review at the CTA. The CTA 2nd Division partially granted the application, disallowing the portion which were either unsupported or did not comply with the invoicing requirements.

Both parties filed a Motion for Reconsideration. DKSP argued that it was able to prove that all of its zero-rated sales for 2012 were made to non-resident foreign corporations doing business outside the Philippines. While the Certificates of Non-Registration of Corporation issued by the Securities and Exchange Commission (SEC) established that the named entities therein are not registered corporations or partnerships in the Philippines, DKSP alleged that the Inter-Group Service Agreements (IGSA) with DKSP's foreign clients and foreign business registration documents can all prove that its clients are branches, subsidiaries or segments of the Deutsche Bank Group of Companies which have business domiciled outside the Philippines.

DKSP also insisted that the actual presentation of official receipts is not among the requisites provided under Section 108(B)(2) of the NIRC in proving zero-rated sales of service. It is enough that the taxpayer, through the facilities of the banking system, is able to report and account the inward remittances to the BSP.

The BIR averred that DKSP failed to sufficiently establish that (1) the input taxes claimed are directly attributable to zero-rated sales and (2) it rendered services in the Philippines for clients who are non-residents and who are not doing business in the country.

Issue:

1. Should unutilized input tax claimed be directly attributable to zero-rated sales?
2. Is proof of inward remittance, in lieu of actual presentation of official receipts, sufficient to prove zero-rated sales of service?
3. Is the IGSA sufficient to establish that DKSP renders services to non-resident foreign corporations (NRFCs) not engaged in business in the Philippines?

Ruling:

1. No. Section 112(A) of the NIRC, as amended, does not require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales. It is sufficient that the input taxes bear a direct or indirect connection with a taxpayer's zero-rated sales. In fact, the provision even allows the allocation of input taxes in case the same cannot be directly or entirely attributable to any of the sales.
2. No. While the argument of the sufficiency of proof of inward remittance was already considered in the main decision, the CTA reiterated that foreign currency remitted as payment for services must, likewise, be supported by VAT zero-rated official receipts. In the instant case, DKSP only presented extracted schedule of zero-rated sales, summary list of sales and bank inward remittances for some transactions. Upon scrutiny by the Independent CPA (ICPA), the CTA ruled that the ICPA correctly recommended that transactions not covered by VAT zero-rated official receipts shall also be denied VAT zero-rating.
3. No. The IGSA only shows the names and addresses of DKSP's clients who are recipients of its services, but does not establish that such clients are NRFCs doing business outside the Philippines. To be considered as NRFCs not doing business in the Philippines, each entity must be supported, at the very least, by both SEC Certificate of Non-Registration of Corporation/Partnership and Certificate or Articles of Foreign Incorporation/Association/Registration.

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The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed RA No. 11469 or the "Bayanihan to Heal as One Act," which authorizes the President to move statutory deadlines and timelines for the submission of documents and payment of taxes, fees, and other charges required by law, among others.