

Tax Bulletin

February 2020

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Highlights

Banks and Other Financial Institutions

- ▶ Circular No. 1073 publishes Resolution No. 123 dated 23 January 2020 of the Monetary Board, extending the transitory period for existing foreign bank branches to use twice the level of capital as basis for determining the Single Borrower's Limit (SBL).
- ▶ Circular No. 1074 publishes Resolution No. 48 dated 8 January 2020 of the Monetary Board, amending the relevant provisions of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Foreign Exchange Transactions (MORFXT) on the conduct of the annual financial audit for banks.
- ▶ Circular No. 1075 publishes the amendments to regulations on financial audit of non-bank financial institutions.

Bureau of Customs

Administrative Penalties

- ▶ Customs Administrative Order (CAO) No. 1-2020 prescribes the rules and guidelines for the imposition of fines and surcharges for Clerical Errors, Misdeclaration, Misclassification and Undervaluation in the Bureau of Customs (BOC).

Dispute Settlement and Protests

- ▶ CAO No. 02-2020 prescribes the policies, guidelines and procedures on dispute settlement and protests in the BOC.

Seized, Abandoned and Forfeited Goods

- ▶ CAO No. 03-2020 lays down the rules for the disposition of seized, abandoned, and forfeited goods in customs custody.

Computerized Accounting System

- ▶ Revenue Memorandum Circular (RMC) No. 10-2020 suspends the requirement for Permit To Use (PTU) Computerized Accounting System (CAS), Computerized Books of Accounts (CBA) and/or their component(s) and allowing their use in the absence of such PTU upon compliance with certain requirements.

Philippine Accounting Standards

- ▶ SEC MC No. 4 defers the implementation of IFRS Interpretations Committee ("IFRIC") Agenda Decision on Over Time Transfer of Constructed Goods [Philippine Accounting Standards (PAS) 23-Borrowing Cost] for the Real Estate Industry.

Procedure on Tax Assessments

- ▶ Procedural due process is not satisfied with the mere issuance of a Preliminary Assessment Notice (PAN), without any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment. In disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process.
- ▶ A Mission Order (MO) is not an acceptable substitute for a Letter of Authority (LOA).
- ▶ An examination of the taxpayer cannot ordinarily be undertaken unless authorized through an LOA. A Letter Notice (LN) cannot take the place of an LOA, and any tax assessment issued on the basis of the LN is void.

Revised BIR Forms

- ▶ RMC No. 12-2020 circularizes the availability of the Revised BIR Form No. 2552 [Percentage Tax Return (for transactions involving shares of stocks listed and traded through the Local Stock Exchange (LSE) or through initial and/ or secondary public offering)].
- ▶ RMC No. 13-2020 circularizes the Availability of BIR Form Nos. 1600-VT and 1600-PT.

Sale of Gold

- ▶ Revenue Regulations (RR) No. 4-2020 implement the provisions of Republic Act (RA) No. 11256, also known as "An Act to Strengthen the Country's Gross International Reserves, Amending for the Purpose Sections 32 and 151 of the National Internal Revenue Code, as Amended, and for Other Purposes".

Stockholders/ Members' Meetings

- ▶ SEC MC No. 3 prescribes the rules on notices of regular meetings of the stockholders/ members.

Tax Amnesty on Delinquencies

- ▶ RMC No. 11-2020 clarifies certain issues on tax amnesty on delinquencies, amending and supplementing RMC No. 57-2019.

Tax Refunds

- ▶ A taxpayer claiming for recovery of tax erroneously or illegally collected must file a claim for refund with the BIR before filing a claim before the Courts. Both claims with the BIR and the Courts must be instituted within 2 years from the payment of the tax. The prescriptive period to file the claim for recovery of the tax is 2 years and not the 6-year period for solutio indebiti under the Civil Code, which is a general law.

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.

Banks and Other Financial Institutions

Circular No. 1073 publishes Resolution No. 123 dated 23 January 2020 of the Monetary Board, extending the transitory period for existing foreign bank branches to use twice the level of capital as basis for determining the Single Borrower's Limit (SBL).

BSP Circular No. 1073 dated 10 February 2020

- ▶ Loans and credit commitments of foreign bank branches as of 07 August 2014 may be maintained, but once repaid or expired, shall no longer be increased in excess of the ceiling allowed under the succeeding paragraph.
- ▶ Existing foreign bank branches shall be given until 31 December 2020 to use twice the level of capital as reference point for purposes of determining the appropriate SBL.

Circular No. 1074 publishes Resolution No. 48 dated 8 January 2020 of the Monetary Board, amending the relevant provisions of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Foreign Exchange Transactions (MORFXT) on the conduct of the annual financial audit for banks.

BSP Circular No. 1074 dated 7 February 2020

- ▶ The Audited Financial Statements (AFS) shall include the balance sheets, income statements, statements of changes in equity, statements of cashflows, notes to financial statements, and opinion of the external auditor.
- ▶ The AFS of banks with subsidiaries shall be presented side by side on a solo basis (parent) and on a consolidated basis (parent and subsidiaries).
- ▶ Banks shall cause an annual financial audit to be conducted by an external auditor included in the List of Selected External Auditors for BSFIs not later than 30 calendar days after the close of the calendar year or the fiscal year adopted by the bank.
- ▶ AFS shall be submitted to the supervising department of the Bangko Sentral not later than 120 calendar days after the close of the calendar year or the fiscal year adopted by the bank, accompanied by the documentary requirements as enumerated under Appendix 55 (Disclosure Requirements to the Audited Financial Statements).
- ▶ A Letter of Comments (LOC) shall be submitted by the External Auditor indicating any material weakness or breach in the institution's internal control and risk management systems not later than 120 calendar days after the close of the calendar year or fiscal year adopted by the bank.
- ▶ If no material weakness or breach is noted to warrant the issuance of a LOC, a certification to this effect shall be submitted in its stead, together with the AFS.
- ▶ The board of directors, in regular or special meeting, shall consider and act on the AFS and the LOC and shall submit, not later than 120 calendar days after the close of the calendar year or fiscal year adopted by the bank, a copy of its resolution (containing the date of receipt of the AFS and LOC by the board of directors), to the appropriate supervising department of the Bangko Sentral.
- ▶ In the case of foreign banks with branches in the Philippines, the country head shall submit a report on the action taken by management (head office, regional, or country, as the case may be) on the AFS and the LOC not later than 120 calendar days after the close of the calendar year or fiscal year adopted by the bank.
- ▶ Government-owned or -controlled banks, including their subsidiaries and affiliates under Bangko Sentral supervision, which are under the concurrent jurisdiction of the Commission on Audit (COA) shall be exempt from the annual financial audit requirement by an external auditor included in the List of Selected External Auditors for BSFIs, subject to certain exceptions.
- ▶ The AFS required to be submitted shall be PFRS/PAS compliant, and the guidelines under Section 172 (Amendment on Audited Financial Statements of the MORB) shall be adopted.
- ▶ Banks shall disclose the information prescribed under Annex A of Appendix 55 (Disclosure Requirements to the Audited Financial Statements) in the AFS.
- ▶ The trust/investment management department shall adopt the provisions of the PFRS/PAS for purposes of preparing the AFS of its trust and other fiduciary and investment management activities. The guidelines under Section 172 (Amendment on Audited Financial Statements of the MORB) shall be adopted.
- ▶ Banks shall submit to the appropriate supervising department of the Bangko Sentral a separate audited financial statement (category B report) of the FCDU/EFCDU for the past year not later than 120 days after the close of the calendar year or fiscal year adopted by the bank in accordance with the provisions of Section 174 of the MORB.

Circular No. 1075 publishes the amendments to regulations on financial audit of non-bank financial institutions.

BSP Circular No. 1075, dated 7 February 2020

- ▶ Quasi-Banks (QBs), Non-Stock Savings and Loan Associations (NSSLAs) and Trust Corporations (TCs) shall cause an annual financial audit by an external auditor included in the List of Selected External Auditors for BSFIs not later than 30 calendar days after the close of the calendar year or the fiscal year adopted by the QB or NSSLA or TC.
- ▶ The AFS shall be submitted to the appropriate supervising department of the Bangko Sentral, not later than 120 calendar days after the close of the calendar year or the fiscal year adopted by the QB or NSSLA or TC, accompanied by the documentary requirements as enumerated under Appendix Q-33 (QB), Appendix S-15 (NSSLA) or Appendix T-5 (TC).
- ▶ In addition, the external auditor shall be required to submit to the board of directors, an LOC indicating any material weakness or breach in the institution's internal control and risk management systems not later than 120 calendar days after the close of the calendar year or fiscal year adopted by the QB or NSSLA or TC.
- ▶ A material weakness shall be defined as a significant control deficiency, or combination of deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be detected or prevented by the entity's internal control. A material weakness does not mean that a material misstatement has occurred or will occur, but that it could occur.
- ▶ If no material weakness or breach is noted to warrant the issuance of an LOC, a certification to this effect shall be submitted in its stead, together with the AFS.
- ▶ Pawnshop operators shall cause an annual financial audit by an external auditor, who will render an opinion on the fairness of the pawnshop operator's financial statements.
- ▶ Financial audit of the following pawnshop operators shall be rendered by an external auditor included in the List of Selected External Auditors for BSFIs not later than 30 calendar days after the close of the calendar year:
 1. Pawnshop business with corollary remittance activity requiring Bangko Sentral Registration, with or without money changing/foreign exchange dealing (Type C License); and
 2. Virtual pawnshop operators or those engaged in pawnshop business through electronic pawning (e-pawning), which refers to systems and processes that enable customers to pawn their personal property through electronic channels (Type D License).
- ▶ For notification and reporting requirements, a Virtual Currency (VC) exchange shall maintain records and submit the following to the appropriate supervising department of the Bangko Sentral:

Nature of Report	Frequency	Due Date
1. AFS (audited by an external auditor included in the List of Selected External Auditors for BSFIs)	Annually	Not later than 120 calendar days after the close of the reference calendar or fiscal year subject to the provisions under Subsection 4511N.6

- ▶ Pawnshop operators, NSSLAs and NBFIs shall post in in conspicuous places in their head offices, all their branches and other offices, as well as in their respective websites, their latest AFS.
- ▶ Titles and submission deadlines of the required reports under the following Appendices are hereby amended to read as follows:

Appendix	Report Title	Frequency	Submission Deadline	Submission Procedure
Q3				
	Consolidated AFS of Financial Intermediaries and their Allied Undertakings/Affiliates/ Subsidiaries supported by Individual Annual Undertakings/ Affiliates/ Subsidiaries and their Audited Financial Statements	Annually	Not later than 120 calendar days after the close of the reference calendar or fiscal year	Appropriate supervising department of the Bangko Sentral
	AFS together with attachments listed in Appendix Q 3	Annually	Not later than 120 calendar days after the close of the reference calendar or fiscal year	-do-
S2				
	Audited/Unaudited Financial Statements required in Sec. 41.81,S together with attachments listed.in Appendix S-15	Annually	Not later than 720 calendar days after the close of the reference calendar or fiscal year	Appropriate supervising department of the Bangko Sentral
P-13				
	AFS together with attachments listed in Appendix P-18	Annually	Not later than 120 calendar days after the close of the calendar year	Appropriate supervising department of the Bangko Sentral
N-1				
	AFS	Annually	Not later 'than 120 calendar days after the close of the calendar or fiscal year	-do-
	AFS of VCs (audited by an external auditor included in the List of Selected External Auditors for BSFIs) together with attachments listed in Appendix N-19	Annually	Not later than 120 calendar days after the close of the calendar or fiscal year	Appropriate supervising department of the Bangko Sentral
	AFS	Annually	Not later than 120 calendar days after the close of the calendar or fiscal year	-do-

Circular No. 1076 publishes the amendments to the provisions of the MORB and the MORNBF on the disqualification and watchlisting of directors/officers.

BSP Circular No. 1076 dated 18 February 2020

- ▶ Subject to specific provisions of law prescribing disqualifications for directors/officers, the following are disqualified from becoming directors/officers of banks and quasi-banks:
 - ▶ **Permanently disqualified:**
 1. Persons who have been convicted by final judgment of a court for offenses involving dishonesty or breach of trust, such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of the Anti-Bouncing Check Law, violation of the Anti-Graft and Corrupt Practices Act, violation of the Anti-Money Laundering Act, and prohibited acts and transactions under the Code of Conduct and Ethical Standards for Public Officials and Employees;
 2. Persons who have been convicted by final judgment of a court or other tribunal for violation of securities and banking laws, rules and regulations;
 3. Persons who have been convicted by final judgment for cases filed against them for offenses under R.A. No. 3591, as amended, (PDIC Charter);
 4. Persons who have been convicted by final judgment of a court for offenses, involving moral turpitude, or for offenses, for which they were sentenced to serve a term of imprisonment of more than 6 years;
 5. Persons who have been judicially declared with finality as insolvent, spendthrift or incapacitated to contract;
 6. Persons who were found to be culpable for the bank's closure as determined by the Monetary Board;
 7. Persons found by the Monetary Board to be administratively liable for violation of laws, rules and regulations implemented by the Bangko Sentral, where a penalty of removal from office is imposed, and which resolution of the Monetary Board has become final and executory; and
 8. Persons found liable by final and executory judgment by any government agency/corporation, including government financial institution, for violation of any law, rule or regulation involving dishonesty, misconduct, or any other grave or less grave offense classified under the Revised Administrative Code or Civil Service rules, which adversely affects their fitness and propriety as directors/officers.
 - ▶ **Temporarily disqualified:**
 1. Persons who have shown unwillingness to settle their financial obligations, as evidenced by, but not limited to, the following circumstances:
 - ▶ the person has failed to satisfy any financial obligation that has been adjudicated by a court;
 - ▶ the person has filed for insolvency or suspension of payments that adversely affects his/her fitness and propriety as director or officer; or
 - ▶ a person who is delinquent in the payment of an obligation with a bank where he/she is a director or officer, or at least 2 obligations with other banks/FLs.

Financial obligations as herein contemplated shall include all borrowings obtained by:

- a. A person for his/her own account or where he/she acts as a guarantor, endorser or surety for loans;
- b. The spouse, except when incurred after legal separation of properties or when the property regime governing the spouses is absolute separation of properties or except when incurred prior to the marriage;
- c. Any debtor whose borrowings or loan proceeds were credited to the account of, or used for the benefit of, the person described under item (1) above of persons temporarily disqualified to become directors/officers;
- d. A partnership of which a person, or his/her spouse is the managing partner or a general partner owning a controlling interest in the partnership; and
- e. A corporation, association or firm wholly-owned or majority of the capital of which is owned by any or a group of individuals/entities mentioned in the immediately preceding items (a), (b) and (d).

They shall remain temporarily disqualified until the financial obligations have been settled or satisfied.

2. Persons involved in the closure of banks pending their clearance by the Monetary Board;
3. Persons confirmed by the Monetary Board to have committed acts or omissions, which include failure to observe/discharge their duties and responsibilities prescribed under existing regulations;
4. Persons found to have been involved in any irregularity/violation, which constitutes a just cause for dismissal/termination as defined under the Labor Code of the Philippines, as amended, regardless of any action taken by the bank;
5. Persons certified by, or in the official files of, foreign financial regulatory authorities, financial intelligence units, or similar agencies or authorities of foreign countries, as charged with commission of, or having committed, irregularities or violations of any law, rule or regulation, which may adversely affect the fitness and propriety of the person or the ability to effectively discharge his/her duties;
6. Persons, other than those covered under item (8) below of persons temporarily disqualified to become directors/officers who are after conduct of investigation by domestic financial or commercial regulatory authorities, financial intelligence units, or similar agencies or authorities such as the SEC, AMLC, or the PDIC, have complaints filed against them by these authorities/units/agencies pending before a court of law or quasi-judicial body, or convicted by said court or quasi-judicial body, but whose conviction has not become final and executory, for offenses involving violation of laws, rules and regulations, which may adversely affect the fitness and propriety of the person or the ability to effectively discharge his/her duties;
7. Persons with cases pending before a court or other tribunal, or those convicted by said court or tribunal but whose conviction has not become final and executory, for offenses involving: (a) dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of the Anti-Bouncing Check Law, violation of the Anti-Graft and Corrupt Practices Act, violation of the Anti-Money Laundering Act, and prohibited acts and transactions under Code of Conduct and Ethical Standards for Public Officials and Employees; or (b) violation of securities and banking laws, rules and regulations;
8. Persons who have been convicted by a court for an offense involving moral turpitude, and persons who have been sentenced to serve a term of imprisonment of more than 6 years for other crimes, but whose conviction has not yet become final and executory;
9. Persons with pending cases for offenses under the PDIC Charter, or those who have been convicted for said cases, but whose conviction has not yet become final and executory;
10. Persons found by the Monetary Board to be administratively liable for violation of laws, rules and regulations implemented by the Bangko Sentral, where a penalty of removal from office is imposed, and which resolution of the Monetary Board is on appeal, unless execution or enforcement thereof is restrained by the appellate court;
11. Persons against whom a formal charge has been filed or who are found liable by any government agency/corporation, including government financial institution, for violation of any law, rule or regulation involving dishonesty, misconduct or any other grave or less grave offense classified under the Revised Administrative Code or Civil Service rules that adversely affects their fitness and propriety as directors/officers, and which finding of said government institution is on appeal, unless execution or enforcement thereof is restrained by the appellate court; and
12. Persons found by the Monetary Board to be administratively liable for violation of laws, rules and regulations implemented by the Bangko Sentral, where a penalty of suspension from office or fine is imposed, unless the finding is on appeal and the execution of enforcement thereof is restrained by the appellate court.

Resignation or retirement from his/her office shall not exempt the person from being permanently or temporarily disqualified under this Section.

▶ **The following are prohibited from becoming officers:**

1. The spouses or relatives within the second degree of consanguinity or affinity holding officership positions across the following functional categories within a bank or quasi-bank:
 - ▶ Decision-making and senior management function, e.g., president, chief executive officer (CEO), chief operating officer (COO), general manager, and chief financial officer (CFO);
 - ▶ Treasury function, e.g., treasurer or treasury head;
 - ▶ Recordkeeping and financial reporting functions, e.g., controller and chief accountant;
 - ▶ Safekeeping of assets, e.g., chief cashier;
 - ▶ Risk management function, e.g., chief risk officer;
 - ▶ Compliance function, e.g., chief compliance officer; and
 - ▶ Internal audit function, e.g., chief audit executive.

The spouse or a relative within the second degree of consanguinity or affinity of any person holding the position of manager, cashier, or accountant of a branch or branch-lite unit of a bank or their respective equivalent positions is prohibited from holding or being appointed to any of said positions in the same branch or branch-lite unit.

2. Any appointive or elective official, whether full time or part time, except in cases where such service is incidental to the financial assistance provided by the government or government-owned or -controlled corporations (GOCCs) or in cases allowed under existing laws.
3. In the case of Coop Banks:
 - ▶ Any incumbent officer or employee of the Cooperative Development Authority (CDA), except in a coop bank organized/owned by primary cooperative(s) whose members are officers or employees of the CDA;
 - ▶ Any incumbent elective public official, except a party list representative who is an officer of a cooperative he represents, and which cooperative is a stockholder of the cooperative bank; and
 - ▶ A person engaged in a business similar to that of the cooperative or who in any way has a conflict of interest with it.

Bureau of Customs (BOC)

Administrative Penalties

CAO No. 1-2020 prescribes the rules and guidelines for the imposition of fines and surcharges for Clerical Errors, Misdeclaration, Misclassification and Undervaluation in the BOC.

Customs Administrative Order (CAO) No. 01-2020

- ▶ The CAO shall cover all Goods Declaration for exportation or importation whether for consumption, warehousing or admission.
- ▶ The following penalties shall be imposed in case of Clerical errors, Misdeclaration, Misclassification and Undervaluation as described below:
 1. **Fine of P5,000.00**
 - ▶ For every clerical error determined to have been committed in the covering Goods Declaration upon Lodgement, without prejudice to the imposition of additional fines or penalties for other inadvertent errors discovered in the Goods Declarations of shipments after release from Customs.
 2. **250% Surcharge**
 - ▶ Where the resulting discrepancy in duties and taxes to be paid between what is legally determined upon assessment and what is declared arose from misdeclaration, misclassification or undervaluation; Provided that, the discrepancy in duty and tax to be paid between what is legally determined upon assessment by the port and what is declared is 10% or more.
 - ▶ Instances for Imposition:
 - a. Misdeclaration as to the Quantity, Quality, Description, Weight and Measurement of Goods;
 - b. Undervaluation; and
 - c. Misclassification.
 - ▶ The following commercial documents as requirements shall be considered in determining whether or not a shipment is misdeclared, misclassified or undervalued:
 - a. Commercial Invoice;
 - b. Bill of Lading/Airway Bill;
 - c. Packing List;
 - d. Safety Data Sheet/Certificate of Analysis;
 - e. Certificate of Origin/Origin Declaration;
 - f. Survey Report of Accredited Surveyor;
 - g. Import Permit/Clearance; and
 - h. Other pertinent documents.
 3. **500% Surcharge**
 - ▶ When the Misdeclaration, Misclassification or Undervaluation is intentional or fraudulent, in addition to the Seizure of subject shipment.
- ▶ **Surcharge shall not be imposed in the following cases:**
 1. The discrepancy between the duty to be paid as legally determined upon assessment and what is declared is less than 10%, without prejudice to the imposition of surcharges, regardless of the amount of discrepancies, when the Misdeclaration, Misclassification or Undervaluation is intentional or fraudulent.
 2. The declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification, or when the tariff classification declaration relied on an official government ruling.
 3. A difficult or highly technical question on tariff classification occurs when the Goods are classifiable under more than one ASEAN Harmonized Tariff Nomenclature (AHTN) chapter, heading or sub-heading or the product description is not specifically provided for in any AHTN heading or sub-heading, and will need the ruling of the Tariff Commission for the determination and resolution thereof.

4. The declared value is rejected as a result of an official ruling or decision under the customs dispute settlement process involving difficult or highly technical question relating to the application of customs valuation rules; or
 5. The Misdeclaration, Misclassification or Undervaluation was subjected to timely amendments and was corrected prior to Final Assessment or examination of the Goods pursuant to Section 408 of the Customs Modernization and Tariff Act (CMTA).
- ▶ A discrepancy amounting to more than thirty percent (30%) of the duty and tax to be paid between what is legally determined and what is declared shall constitute *prima facie* evidence of Fraud in case of Misdeclaration, Misclassification or Undervaluation.
 - ▶ Such misdeclared, misclassified, and undervalued goods shall be subject to Seizure Proceedings.
 - ▶ CAO No. 1-2020 shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of national circulation.

(Editor's Note: CAO No. 1 -2020 was published in the Manila Times on 5 March 2020)

Dispute Settlement and Protests

CAO No. 02-2020

- ▶ The CAO shall cover the right to administrative remedies of an aggrieved importer or exporter pertaining to dispute settlement or protest arising from customs valuation, rules of origin, tariff classification and other customs issues.
- ▶ Dispute settlement may cover the following issues:
 1. Tariff Classification;
 2. Customs Valuation;
 3. Rules of Origin;
 4. Other customs Issues; and
 5. Mixture of the foregoing issues.
- ▶ All dispute settlements arising from issues on tariff classification, customs valuation or rules of origin must not be the subject of a pending application for Advance Ruling or such application has not been resolved as prescribed by law.
- ▶ Disputed customs issues involving difficult or highly technical questions of tariff classification, application of customs valuation rules, rules of origin, or a mixture of the foregoing issues may be released under Tentative Assessment.
- ▶ Dispute settlement mechanism shall not apply when the misdeclaration, misclassification or undervaluation is intentional or fraudulent.
- ▶ In cases where the dispute settlement mechanism has commenced, and fraud is discovered, an enforcement issue is deemed to have arisen. The proceedings shall be terminated, and a Warrant of Seizure and Detention shall be issued against the shipment. An enforcement issue involves discovery of violation/s of the CMTA which would warrant the seizure and forfeiture of the goods.
- ▶ When the misdeclaration, misclassification or undervaluation is intentional or fraudulent, a surcharge shall be imposed equivalent to 500% of the duty and tax due. The goods shall be subject to seizure, and fines under the CMTA may be imposed.
 1. A valid tariff classification dispute exists when the importer does not agree with the tariff reclassification made by the District Collector ("DC") upon lodgment of goods declaration and before the Completed Assessment.
 2. A difficult or highly technical Tariff Classification Issue is one where (1) the goods are classified under more than one AHTN heading; or (2) the product description is not specifically provided for in any AHTN heading or subheading.

CAO No. 02-2020 prescribes the policies, guidelines and procedures on dispute settlement and protests in the BOC.

3. If the DC finds that the classification issue involves difficult or highly technical questions that require further testing or review, the following procedures shall be followed:
 - ▶ The DC shall inform the importer;
 - ▶ The DC shall forward the certified true copies of relevant documents to the Tariff Commission ("TC");
 - ▶ The importer may request release of the goods under Tentative Assessment upon payment of duties and posting of sufficient security;
 - ▶ Upon receipt of the ruling of the TC, the goods shall be finally assessed unless there are other issues involved or the BOC appeals the ruling to the Secretary of Finance ("SOF"); and
 - ▶ The DC shall either collect the additional duties and taxes or cancel/refund the surety bond.
 4. If the dispute does not involve difficult or highly technical questions, the DC shall notify the aggrieved importer of his ruling in writing, with a directive to pay the duties and taxes in full.
 5. The aggrieved importer may appeal by way of protest against such ruling. The BOC Commissioner shall render a ruling within 30 days from receipt of the protest. If he fails to act on the ruling, the ruling of the DC shall be deemed affirmed.
 6. An aggrieved importer may submit the matter to the TC for a ruling or appeal to the Court of Tax Appeals (CTA).
 7. If the ruling of the TC is favorable to the importer, it shall be binding upon the BOC unless the SOF rules otherwise, in which case the importer may appeal to the CTA within 30 days from receipt of the adverse ruling.
 8. In case the ruling of the TC is adverse to the importer and the same is adopted by the BOC Commissioner, the importer may appeal the decision to CTA within 30 calendar days from receipt.
- ▶ Upon lodgment of goods declaration and before the Assessment becomes final, the Customs Officer may challenge the declaration made by the importer regarding the dutiable value of the goods.
 - ▶ If the DC finds that the valuation issue involves difficult or highly technical questions, the following procedure shall be followed:
 1. The DC shall inform the importer within 2 days that the valuation issue is difficult or involves highly technical questions.
 2. The DC shall require the importer and Customs Officer to submit position papers within 5 days from receipt of notice.
 3. The DC may require the taking of samples.
 4. The importer may request release of the goods under Tentative Assessment upon payment of duties and taxes and posting of sufficient security.
 5. The DC shall resolve the valuation issue in writing within 15 days from submission of position papers.
 - ▶ If the dispute does not involve difficult or highly technical questions, the DC shall notify the aggrieved importer of his ruling in writing within 48 hours, with a directive to pay the duties and taxes in full.
 - ▶ The aggrieved importer may appeal by way of protest against the ruling.
 - ▶ In case the ruling of the BOC Commissioner is adverse to the importer, he may seek reconsideration or appeal the ruling in accordance with the CAO.
 - ▶ Upon lodgment of the goods declaration and before the Assessment becomes final, the Customs Officer may question the authenticity of the Certificate of Origin ("CO") or accuracy of the information regarding the true origin of the products or certain parts of the CO.
 - ▶ If the importer does not agree with the findings, he may request to the DC for verification of the CO from the issuing country.
 - ▶ The DC shall forward the CO to the Assessment and Operations Coordinating Group ("AOCG") for verification from the issuing country.
 - ▶ The importer may request release of the goods under Tentative Assessment upon payment of duties and taxes as declared in the Goods Declaration and posting of sufficient security.

- ▶ If the issuing country confirms the authenticity of the CO, the corresponding preferential rate shall be applied, and the assessment is deemed completed and final; otherwise, the DC shall forfeit the security posted or require the importer to pay the duties and taxes.
- ▶ If the issuing country finds that the CO was not authentic or accurate, the DC shall forfeit the security posted in case of cash bond or require the importer to pay the applicable duties and taxes equivalent to the amount that is disputed.
- ▶ Upon lodgment of goods declaration and before the Assessment becomes final, the Customs Officer may challenge the declaration made by the importer pertaining to other customs issues. If the importer does not agree, he may elevate the matter to the Principal Appraiser, thereafter to the Chief, Formal Entry Division (FED) or equivalent unit, then to the Deputy Collector for Assessment and finally to the DC.
- ▶ If the DC finds that the issues raised affect the assessment of duties, taxes and other charges, the following procedure shall be followed:
 1. He shall require the importer and Customs Officer to submit position papers within 5 days from receipt of notice;
 2. The DC shall resolve the issues in writing within 15 days from submission of the position papers; and
 3. The importer may request release of the goods under Tentative Assessment upon payment of duties and taxes and posting of sufficient security.
- ▶ If the DC adopts the findings of the Customs Officer, the DC shall notify the aggrieved importer of his ruling in writing within 48 hours, with a directive to pay the duties and taxes in full. The aggrieved importer may protest such ruling.
- ▶ The Commissioner shall render a ruling within 30 days from receipt of the protest. In case he fails to act on the same, the DC's decision shall be deemed affirmed.
- ▶ In case the ruling of the Commissioner is averse to the importer, he may seek reconsideration or appeal the ruling in accordance with this CAO.
- ▶ When the dispute involves mixed issues, the DC shall resolve them **simultaneously** in accordance with the same procedure provided for the resolution of similar issues.
- ▶ The DC may resolve all other issues without waiting for the resolution of a tariff classification issue, except when the tariff classification issue is indispensable to the resolution of the other issues.
- ▶ The aggrieved importer, exporter or stakeholder directly affected by the adverse ruling of the DC in protestable cases may appeal by way of protest to the BOC Commissioner within 15 days from receipt of such adverse ruling, or within 15 days from payment in case payment is made as a result of the adverse ruling. Otherwise, the action of the DC shall be final and conclusive.
- ▶ When the protest is filed in proper form, the BOC Commissioner shall render a ruling within 30 days from receipt of protest; otherwise, the ruling shall be deemed affirmed.
- ▶ The importer aggrieved by the ruling of the BOC Commissioner, other than for a ruling on tariff classification, may, within 15 days from receipt of the ruling, file a Motion for Reconsideration with the BOC Commissioner.
- ▶ Unless an appeal is made to the CTA, the ruling of the BOC Commissioner shall be final and executory.
- ▶ The BOC Commissioner's ruling may be appealed to the CTA within 30 days from receipt of the adverse decision or final order of the Commissioner.
- ▶ All protest cases filed prior to the effectivity of the CAO shall be resolved in accordance with the applicable provisions of the Tariff and Customs Code of the Philippines (TCCP), as amended.
- ▶ CAO No. 2-2020 shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of national circulation.

(Editor's Note: CAO No. 2 -2020 was published in the Manila Times on 5 March 2020)

Seized, Abandoned and Forfeited Goods

CAO No. 03-2020 lays down the rules for the disposition of seized, abandoned, and forfeited goods in customs custody.

CAO No. 03-2020

- ▶ Goods in customs custody that are in the following condition and status shall be subject to disposition:
 1. Abandoned goods with final decree of abandonment;
 2. Goods deemed abandoned pursuant to Section 811 of the CMTA pertaining to goods stored in customs bonded warehouses (CBW), which were not withdrawn after the prescribed period allowed;
 3. Forfeited goods, other than prohibited, restricted and regulated goods, after liability has been established by the proper administrative or judicial proceedings in conformity with the provisions of the CMTA;
 4. Goods subject to a valid lien for customs duties, taxes and other charges collectible by the BOC, after the expiration of the period allowed for payment thereof;
 5. Goods subject of forfeiture proceedings when certified by the Customs Officer as Perishable Goods.

- ▶ Goods subject to disposition may be disposed in any of the following manner provided that other government agencies and the public are invited to witness the disposition:
 1. Public auction upon due notice;
 2. Donation to another government agency;
 3. Official use of the BOC;
 4. Negotiated sale;
 5. Re-exportation upon order of the District Collector or pursuant to international agreements and treaties;
 6. Destruction or condemnation; or
 7. Turn-over to proper government agencies.

- ▶ The floor price of goods subject to public auction shall not be less than the landed cost of the goods, taking into account the normal depreciation of goods, which shall be determined by the Imports and Assessment Service (IAS).

- ▶ The following cannot participate in a public auction:
 1. Employees or officials of the BOC;
 2. Importers or consignees of the goods being auctioned;
 3. Bidders who fail to pay the winning bid price in any auction conducted by the BOC twice, and those disqualified by the Ports for other infractions in the last 12 months immediately preceding the date of auction; and
 4. Offeror/s or his or her authorized representative/s who are not present during the opening of the sealed offers.

- ▶ Entities or persons interested to participate in every public auction must register with the Port concerned subject to compliance with certain requirements.

- ▶ All goods subject to disposition shall be offered for sale on an "As is Where Is" basis, i.e. no warranty is given as to the quality, state and condition of the goods.

- ▶ For heavy equipment, motor vehicles, small value items, and goods, which require appraisal by technical and specialized experts, the sale through public auction may be conducted by a third-party auctioneer chosen by the BOC subject to existing rules and regulations.

- ▶ An auction shall be declared as a failed bidding when any of the following circumstances occurs:
 - ▶ When there is no bid; or
 - ▶ When the highest bidder fails to comply with payment.

- ▶ Goods subject to disposition or which remain unsold after at least two public auctions may be donated to another government agency or to the Department of Social Welfare and Development (DSWD) if the goods are suitable for use as shelter or consists of foodstuffs, clothing materials or medicines.

- ▶ All requests for donation shall be coursed through the BOC Commissioner subject to the approval of the Secretary of Finance.
- ▶ Goods subject to disposition or which remain unsold after at least two public auctions and are suitable for official use to promote intensive collection of taxes and/or help prevent or suppress smuggling, may be declared by the BOC Commissioner for official use of the BOC, subject to approval of the Secretary of Finance.
- ▶ The following cannot participate in a negotiated sale which pertains to acceptance of an offer which is determined to be most advantageous to the government by a committee formed for such purpose:
 1. Employees or officials of the BOC;
 2. Importers or consignees of the goods being auctioned;
 3. Defaulting offerors unable to comply with payment requirements under the CAO, and those disqualified by the ports for other infractions in the last 12 months immediately preceding the date of negotiated sale;
 4. Offerors, who are not present during the opening of sealed offers; and
 5. Offerors, who failed to comply with any of the documentary requirements for negotiated sale.
- ▶ The following goods shall be disposed through condemnation which pertains to disposition by either rendering, crushing, burning, breaking, shredding, or any other appropriate method as determined by a committee formed for such purpose:
 1. Restricted goods, which are too highly dangerous to be kept or handled;
 2. Goods that are absolutely prohibited unless the mode of disposition is specifically provided by the CMTA;
 3. Goods that are prohibited by law to be released, unless the mode of disposition is specifically provided by the CMTA;
 4. Goods that have no commercial value; and
 5. Goods that are injurious to public health.
- ▶ CAO 3 - 2020 shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of general circulation.

(Editor's Note: CAO No. 3 -2020 was published in the Manila Times on 5 March 2020)

Computerized Accounting System

RMC No. 10-2020 issued on 6 February 2020

- ▶ All taxpayers with pending applications for PTU, which were filed with the National Accreditation Board (NAB) and were assigned to the Technical Working Group (TWG) for evaluation as of the effectivity of this Circular, shall be allowed to use their CAS, CBA, and/or components thereof, in the absence of the required PTU, provided that the following shall be submitted by the taxpayer to the TWG Secretariat of the RDO/LT Office where they are registered:
 1. Duly-accomplished and notarized Sworn Statement with attached Summary of System Description, Commercial Invoice/Receipts/ Document Description, Forms/ Records and Reports Specification executed and signed by the taxpayer/company's authorized representative/s, and the Special Power of Attorney, Board Resolution, or Secretary's Certificate stating such authority;

RMC No. 10-2020 suspends the requirement for PTU CAS, CBA and/or their component(s) and allowing their use in the absence of such PTU upon compliance with certain requirements.

2. Sample print copy of system-generated Principal and Supplementary Receipts/ Invoices as defined under Section 2 of RR No. 18-2012 showing compliance with RR No. 16-2018, if applicable; and
 3. Sample print copy of system-generated Books of Accounts, such as, but not limited to, General Journal, General Ledger, Sales Journal, Purchase Journal, Inventory Book, Cash Receipts Book, and Cash Disbursements Book reflecting the mandatory fields stated in RR No. 9-2009, if applicable.
- ▶ In the absence of the required PTU, an "Acknowledgement Certificate" shall be prepared and issued by the TWG Secretariat of the RDO/LT Office where the taxpayer is registered.
 - ▶ The said Certificate must be issued within 3 working days from the receipt of the above requirements with a Control Number, which shall be indicated or reflected on the face of the principal and/or supplementary receipts/invoices.
 - ▶ In case the taxpayer opted to maintain Loose-leaf Books of Accounts, the application for such shall be continuously processed by the RDO having jurisdiction over such taxpayer pursuant to RMC No. 68-2017.
 - ▶ All CAS, CBA, and/or Components thereof used without the required PTU shall be subject to post-evaluation, which may be done simultaneously with the audit of the books of accounts and other accounting records of the taxpayer pursuant to a Letter of Authority (LOA).
 - ▶ All pending applications for PTU that have undergone system demonstration are also covered by this RMC.
 - ▶ In case of any system enhancement/modification and/or upgrade of CAS/CBA and/or Components thereof and if such will result in the change of version number and/or systems release, the taxpayer shall inform in writing the TWG Secretariat of the RDO/LT Office where they are registered. A comparative matrix of the changes in the current and upgraded system shall be submitted together with the letter notification.
 - ▶ This Circular shall take effect 15 days after publication in any newspaper of general circulation.

(Editor's Note: RMC No. 10-2020 was published in Malaya Business Insight on 7 February 2020)

Philippine Accounting Standards

SEC MC No. 4 defers the implementation of IFRS Interpretations Committee ("IFRIC") Agenda Decision on Over Time Transfer of Constructed Goods [Philippine Accounting Standards (PAS) 23-Borrowing Cost] for the Real Estate Industry.

SEC Memorandum Circular (MC) No. 4, Series of 2020, dated 21 February 2020

- ▶ The Commission En Banc, in its meeting held on 11 February 2020, decided to provide relief to the Real Estate Industry by deferring the implementation of the IFRIC Agenda Decision on Over Time Transfer of Constructed Goods (PAS 23-Borrowing Cost) until 31 December 2020.
- ▶ Effective 1 January 2021, the Real Estate Industry will adopt the IFRIC interpretations and any subsequent amendments retrospectively or as the SEC will later prescribe.
- ▶ A real estate company may opt not to avail of any of the relief provided above and, instead, fully comply with the requirements of the IFRIC interpretations.
- ▶ A real estate company, which opted for the deferral, shall be required to disclose in the Notes to the Financial Statements the accounting policies applied, a discussion of the deferral of the subject implementation issues and a qualitative discussion of the impact in the financial statements, had the IFRIC interpretations been adopted.
- ▶ Should the deferral options result in an accounting policy change, such accounting change will have to be accounted for under Philippine Accounting Standard (PAS) 8, Accounting Policies, Changes in Accounting Estimates and Errors, i.e., retrospectively, together with the corresponding required quantitative disclosures.
- ▶ The above relief shall form part of PFRS for the purpose of preparing and filing general-purpose financial statements with the Commission.

Procedure on Tax Assessments

Procedural due process is not satisfied with the mere issuance of a PAN, without any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment. In disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process.

Getz Pharma (Phils.), Inc. vs. Commissioner of Internal Revenue

CTA Case No. 8922 promulgated on 17 January 2020

Facts:

On 17 January 2012, petitioner Getz Pharma (Phils.), Inc. received a Letter of Authority (LOA) from BIR Revenue District Office (RDO) No. 43-A (East Pasig), for calendar year (CY) 2010. On 13 January 2014, petitioner received the Preliminary Assessment Notice (PAN) from the BIR. On 14 January 2014, the BIR issued the Formal Letter of Demand (FLD) against petitioner.

Within 30 days from its receipt of the FLD, petitioner filed its protest against the FLD and requested that the alleged deficiency tax assessments for CY 2010 be cancelled and set aside. Within 60 days from the filing of its protest, petitioner submitted its supporting documents to the BIR. Since the protest was unacted by the BIR, Getz filed a Petition for Review with the CTA.

Issue:

Whether the issuance of the FLD by the BIR before the lapse of the 15-day period to reply to the PAN violated petitioner's right to due process.

Ruling:

Yes. Petitioner received a copy of the PAN on 13 January 2014. Petitioner, therefore, had 15 days or until 28 January 2014 within which to file a reply or protest against the PAN.

The BIR issued and served the FLD on 14 January 2014, barely a day after petitioner's receipt of the PAN. Evidently, the BIR did not wait for petitioner to reply to the PAN the within the 15-day period to reply, as provided in Revenue Regulations 12-99.

The PAN is an important part of due process. In disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process. Procedural due process is not satisfied with the mere issuance of a PAN, without any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

The procedural defect from the issuance of the FLD prior to the lapse of the period to respond to the PAN is not cured by the fact that petitioner was able to protest the FLD. In light of the violation of petitioner's right to procedural due process, the FLD should be considered void.

A MO is not an acceptable substitute for an LOA.

Commissioner of Internal Revenue vs. Builders Steel Corporation

CTA EB No. 2080 promulgated on 28 January 2020

Facts:

On May 15, 2015, Builders Steel Corporation (BSC) filed a Petition for Review before the CTA seeking the reversal of the Final Decision of the CIR holding respondent liable for deficiency income tax and value-added tax (VAT). BSC assailed the validity of the assessment mainly on the ground that the Revenue Officers (ROs), who conducted the investigation, were not authorized to conduct the audit pursuant to a valid of Letter of Authority (LOA).

During the trial, BSC was able to prove that the ROs were issued Mission Orders, authorizing them to conduct an immediate inventory of BSC's goods on hand. The Court in Division found this claim supported by the case records; hence, it granted BSC's Petition for Review and set aside the CIR's Final Decision.

The CIR filed their Motion for Reconsideration which was denied by the Court in Division. Aggrieved, the CIR filed a Petition for Review with the CTA *En Banc*.

Issues:

Whether the assessment issued by the CIR against BSC on the basis of the Mission Orders is valid?

Ruling:

No. The Court En Banc upheld the Court in Division, which invalidated the CIR's assessment due to the absence of a valid LOA. An MO is not an acceptable substitute for the lack of a LOA. As ruled by the Supreme Court in the case of CIR vs. Sony Philippines, Inc. and Mediacard Philippines, Inc. vs. CIR, there must be a grant of authority before any revenue officer can conduct an examination or assessment.

An examination of the taxpayer cannot ordinarily be undertaken unless authorized through an LOA. An LN cannot take the place of an LOA, and any tax assessment issued on the basis of the LN is void.

WPP Marketing Communications, Inc., vs. Commissioner of Internal Revenue
CTA Case No. 9704, promulgated on 29 January 2020

Facts:

Petitioner WPP Marketing Communications, Inc. (WPP) received a Letter Notice (LN) from the BIR, informing WPP of the discrepancy in the information/data provided by third-party sources against its declarations per VAT returns. Thereafter, WPP received the PAN and FLD, together with the Audit Result/Assessment Notice from the BIR/ demanding payment of alleged deficiency VAT, with interest for taxable year 2004.

WPP filed its protest against the FLD and, then, received the Final Notice Before Seizure (FNBS) for the collection of the deficiency tax. WPP filed a letter, requesting that any action to collect the alleged deficiency tax be suspended, and that the subject assessment be reinvestigated.

Subsequently, after receiving a Collection Letter from the BIR, WPP filed an application for compromise settlement. However, the BIR denied the application for compromise settlement.

Aggrieved, WPP filed a Petition for Review with the CTA.

Issue:

Whether the assessment issued by the CIR against WPP on the basis of the LN is valid?

Ruling:

No. Unless authorized by the Commissioner himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. There must be a grant of authority before any revenue officer can conduct an examination or assessment.

An LN is not the same as the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, an LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, which was not done in this case, the deficiency VAT assessment issued against WPP is void.

Revised BIR Forms

RMC No. 12-2020 circularizes the availability of the Revised BIR Form No. 2552 [Percentage Tax Return (for transactions involving shares of stocks listed and traded through the LSE or through initial and/ or secondary public offering)]

RMC No. 12-2020 issued on 7 February 2020

- ▶ This Circular was issued to prescribe the revised BIR Form No. 2552 or Percentage Tax Return for transactions involving shares of stocks listed and traded through the Local Stock Exchange (LSE) or through initial and/or secondary public offering, which was revised in connection with the Form Simplification Programs and pursuant to Republic Act No. 10963 or also known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law.
- ▶ The Revised Manual Return are already available under the BIR Forms-VAT/Percentage Tax Returns Section of the BIR website (www.bir.gov.ph). However, due to its current unavailability in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms), the eFPS/eBIRForms filers shall continue to use the existing BIR Form No. 2552 in the eFPS and in the offline eBIRForms Package v7.5 in filing the return. A revenue issuance shall be issued to announce the availability of the revised return in the eFPS and offline eBIRForms Package.
- ▶ Manual filers shall download and print the PDF version of the form, and completely fill out all applicable fields. Otherwise, the manual filer shall be subjected to penalties under Sec. 250 of Tax Code, as amended.
- ▶ Payment of the tax due thereon, if any, for manual and eBIRForms filers shall be made manually or online.

RMC No. 13-2020 circularizes the Availability of BIR Form Nos. 1600 and 1600-PT

RMC No. 13-2020 issued on 7 February 2020

- ▶ This circular was issued to inform the taxpayers and others concerned on the availability of the Monthly Remittance Returns of Value Added Tax Withheld (BIR Form No. 1600-VT) and Monthly Remittance Return of Other Percentage Taxes Withheld (BIR Form No. 1600-PT) in the BIR website (www.bir.gov.ph), which were revised due to the implementation of Tax Reform for Acceleration and Inclusion (TRAIN) Law.
- ▶ The Revised Manual Returns are already available under the BIR Forms-VAT/Percentage Tax Returns Section of the BIR website (www.bir.gov.ph). However, due to its current unavailability in the Electronic Filing and Payment system (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms), eFPS/eBIRForms filers shall continue to use the existing BIR Form No. 1600 in the eFPS and in the offline eBIRForms Package v7.5 in filing the return. A revenue issuance shall be issued to announce the availability of the revised return in the eFPS and offline eBIRForms Package.
- ▶ Manual filers shall download and print the PDF version of the form, and completely fill out the applicable fields in form otherwise, the manual filers shall be subjected to penalties under Sec. 250 of Tax Code, as amended.
- ▶ Payment of the tax due thereon, if any, for manual and eBIRForms filers shall be made manually or online.

RR No. 4-2020 implements the provisions of RA No. 11256, also known as "An Act to Strengthen the Country's Gross International Reserves, Amending for the Purpose Sections 32 and 151 of the National Internal Revenue Code, as Amended, and for Other Purposes."

Sale of Gold

RR No. 4-2020 issued on 18 February 2020

- ▶ No excise tax shall be imposed on the following: (a) sale of gold to the BSP by registered Small Scale Miners (SSMs) and accredited traders; and (b) sale of gold by registered SSMs to accredited traders for eventual sale to the BSP.
- ▶ The taxpayer may file a claim for refund or tax credit with the Commissioner of Internal Revenue (CIR) if the excise tax has been paid prior to the sale of gold to the BSP.
- ▶ All SSMs and accredited traders are required to obtain a "TIN", which shall serve as basis for the income and excise tax exemption of their sale or eventual sale of gold to BSP.
- ▶ The BSP Certification issued to registered SSMs and to accredited traders shall be the basis for the tax exemptions and non-withholding/collection of taxes under RA No. 11256.
- ▶ If the tax exemption is found by the BIR as not applicable to a BSP transaction with a person or entity purporting to be a registered SSM and/or accredited trader, such person or entity shall be primarily and solely liable for any deficiency taxes that may be assessed by the BIR.
- ▶ To validate the sale to accredited traders, SSMs shall issue Acknowledgment of Gold Delivery and Sale, stating therein their TIN, to such accredited traders. This, in turn, shall be submitted to BSP by accredited traders upon eventual sale of the gold to the BSP.
- ▶ In any case, all gold sold to the BSP by accredited traders shall be presumed to have been purchased by said accredited traders from SSMs.
- ▶ The BSP shall provide monthly report to the BIR on the details of the sales transaction from registered SSMs and accredited traders.
- ▶ Despite Sections 7, 8, and 9 of the Implementing Rules and Regulations (IRR) of RA No. 11256, SSMs and traders shall be given a period of 1 year, which may be extended for a period not exceeding 3 years, from the effectivity of the IRR to comply with the registration and accreditation requirements prescribed to claim the tax exemption.
- ▶ During the transitory period, the BSP shall issue a temporary certification to SSMs and traders.
- ▶ SSMs and traders holding such temporary certification shall enjoy the tax exemptions and non-withholding/collection of taxes, provided, that they comply with the procedure for the sale of gold to BSP under Section 10 of the IRR of RA No. 11256.
- ▶ After the transitory period, all sale of gold to the BSP by non-registered SSMs and/or non-accredited traders shall be subject to the applicable taxes under the NIRC of 1997, as amended.
- ▶ This Regulation shall take effect 15 days after publication in the Official Gazette or in any newspaper of general circulation, whichever comes first.

(Editor's Note: RR No. 4-2020 was published in Malaya Business Insight on 20 February 2020)

Stockholders/ Members' Meetings

SEC Memorandum Circular (MC) No. 3, Series of 2020, dated 21 February 2020

- ▶ Written notice of regular meetings shall be sent to all stockholders/members of record at least 21 calendar days prior to the date of the meeting.
- ▶ In case of postponement of stockholders'/members' regular meetings, a written notice of the postponement shall be sent to all stockholders/members of record at least 2 weeks prior to the date of the meeting as originally scheduled. The stockholders/members of record shall be notified of the new schedule of the regular meeting in accordance with the immediately preceding paragraph.

SEC MC No. 3 prescribes the rules on notices of regular meetings of the stockholders/members.

- ▶ The written notice must contain all information and deadlines relevant to the shareholders'/ members' participation in the meeting and exercise of the right to vote remotely (*in absentia* or through a proxy).
- ▶ The Commission may impose any or all of the sanctions provided under Section 158 of the Revised Corporation Code of the Philippines (RCCP).
- ▶ This Memorandum Circular shall take effect upon its publication in two newspapers of general circulation in the Philippines.

(Editor's Note: SEC MC No. 3 was published in the Philippine Daily Inquirer and The Manila Times on 27 February 2020)

Tax Amnesty on Delinquencies

RMC No. 11-2020 clarifies certain issues on tax amnesty on delinquencies, amending and supplementing RMC No. 57-2019.

RMC No. 11-2020 issued on 6 February 2020

- ▶ In case the FAN/FLD was timely protested or disputed, but such protest or appeal was withdrawn not later than 23 April 2020, the tax liabilities under such FAN/FLD shall be considered delinquent accounts starting 24 April 2019, and thus qualified for tax amnesty provided that the delinquent account pertains to taxable year 2017 and prior years.
- ▶ The withdrawal of the protest or appeal to the FAN/FLD/FDDA will have the same effect as if no protest or appeal was filed. It makes the tax liabilities delinquent upon the lapse of 30 days, within which to file a protest or appeal, reckoned from receipt of such FAN/FLD/FDDA. In such case, the FAN/FLD/FDDA, the protest or appeal of which was subsequently withdrawn, should have been received at the latest on 25 March 2019, to be considered delinquent on or before 24 April 2019.
- ▶ The availment of tax amnesty on delinquencies shall be considered fully complied with upon the completion of the enumerated steps which includes the filing/submission of the Tax Amnesty Return (TAR), with complete documentary requirements to the concerned office within the one-year availment period.

To give every opportunity to delinquent taxpayers who have secured the Certificate of Tax Delinquencies/Tax Liabilities and endorsement of the Acceptance Payment Form, but have paid the amnesty tax due on 23 April 2020, the last day of the availment period, an extended period of 30 days shall be given for the submission of the complete documentary requirements.

- ▶ The following are the instances wherein the protest to the FAN/FLD or appeal to the FDDA will be considered invalid, making the assessment final and executory:
 1. The protest to FAN/FLD was filed beyond 30 days from receipt of the FAN/FLD;
 2. The appeal to FDDA was filed beyond 30 days from receipt of the FDDA;
 3. The protest to FAN/FLD was not filed with the duly authorized representative of the CIR who signed the FAN/FLD;
 4. The appeal to the FDDA was not filed with the Office of the CIR;
 5. The protest/appeal failed to state the applicable law, rules, and regulations or jurisprudence on which it is based; and
 6. The request for reinvestigation did not specify the newly discovered or additional evidence, which the taxpayer intends to present as required in a valid protest.
- ▶ An invalid protest or appeal does not toll the running of the 30-day period to file such protest or appeal. Thus, the assessment becomes final and executory after the lapse of such 30-day prescriptive period reckoned from receipt of the FAN/FLD/FDDA.

Tax Refunds

A taxpayer claiming for recovery of tax erroneously or illegally collected must file a claim for refund with the BIR before filing a claim before the Courts. Both claims with the BIR and the Courts must be instituted within 2 years from the payment of the tax.

The prescriptive period to file the claim for recovery of the tax is 2 years, as provided in the Tax Code, which is a special law, and not the 6-year period for *solutio indebiti* under the Civil Code, which is a general law.

Consolidated Cases of Commissioner of Internal Revenue vs. San Miguel Corporation and San Miguel Corporation vs. Commissioner of Internal Revenue

Supreme Court Second Division G.R. Nos. 180740 and 180910, promulgated 11 November 2019

Facts:

Republic Act (RA) No. 8240 adopted a specific tax system on, among others, fermented liquor. The Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue (CIR), issued Revenue Regulations (RR) No. 17-99 to implement the 12% increase on excise tax on said products.

Claiming that RR No. 17-99 is not in conformity with the provisions of RA 8240, which it seeks to implement, San Miguel Corporation (SMC) filed a claim for tax refund or credit on 10 January 2003 with the BIR of its excess excise tax paid from 11 January 2001 to 31 December 2002. Without waiting for the CIR's decision on its claim, SMC filed a claim before the CTA on 24 February 2003.

The CTA ruled that the claim of SMC for overpaid excise tax for 11 January to 23 February 2001 was already barred by prescription based on Section 229, in relation to Section 130(A)(2) of the Tax Reform Act of 1997 (or Tax Code). The CTA also ruled that in the absence of a way to determine the amounts, which correspond to excess excise tax payments from 24 to 28 February 2001, the claim for refund for the whole month of February was considered time-barred.

Issues:

1. Is SMC's claim for overpaid excise tax for 11 January to 28 February 2001 barred by prescription?
2. Can the principle of *solutio indebiti* (the payment to one which is not due him) under civil law apply such that the prescriptive period to file the claim for refund is extended to six years?

Ruling:

1. RR No. 17-99 has already been declared invalid for increasing the tax rate fixed in RA 8240. Such regulation is considered as an invalid administrative issuance. Thus, SMC is entitled to a refund for excess excise taxes which have not yet prescribed.

However, SMC's claim for overpaid excise tax for 11 January to 28 February 2001 is already barred by prescription.

Section 229 of the Tax Code provides that a taxpayer claiming for recovery of tax erroneously or illegally collected must file an administrative claim with the CIR before filing a judicial claim before the courts. Both claims must be instituted within two years from the payment of tax.

For excise tax on domestic products in general, the return must be filed, and excise tax paid by the manufacturer or producer before removal of the products from the place of production. Hence, the date of payment of the excise tax on domestic products depends on the date of actual removal of the taxable domestic products from the place of production.

SMC filed its administrative claim on 10 January 2003 and its judicial claim on 24 February 2003. Counting back 2 years from 24 February 2003 is 24 February 2001. Thus, any claim by SMC for overpaid excise tax prior to February 24, 2001 had already prescribed.

The claim for refund of overpaid excise taxes from 24 to 28 February 2001 is also disallowed for failure of SMC to present a definite computation of such payments. It is SMC's obligation to prove its claim for refund and it is not upon the tax courts to determine the propriety of claims without the claimant presenting adequate proof.

SMC argued that it availed itself of the Advance Payment Scheme which it allows it to remove products from the place of production and file the prescribed returns a week after the actual removal so that the date of removal may not always be the reckoning point for purposes of prescription.

However, SMC merely presented monthly removal reports without proof of the actual amounts paid on specific dates. Because of such failure, the two-year prescriptive period may be reckoned from the deadline of the payment of the excise tax, which is before the monthly removal of the subject products from the place of production.

Thus, SMC's claim for refund of overpaid excise taxes from 11 January to 28 February 2001 is already barred by prescription.

2. The applicable prescriptive period is two years, as stated in the Tax Code, which is a special law, and not the 6-year period under Civil Code on the principle of *solutio indebiti*.

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