

This MAP Tax Bulletin for July 2021 was contributed by Isla Lipana & Co./PwC Philippines.

SUPREME COURT DECISION

Subsidiary journals are not required to support a claim for input VAT refund
(G.R. No. 218057, promulgated 18 January 2021)

In a claim for refund of unutilized and excess input VAT attributable to VAT zero-rated sales, the Supreme Court affirmed that the submission of the subsidiary sales journal and subsidiary purchase journal is not indispensable to support the claim for refund. In this regard, Section 112(A) of the Tax Code which enumerates the requisites for refund does not require said journals.

BIR ISSUANCES

Implementing penalty provisions under the TRAIN Law
Revenue Regulations No. 13-2021

The BIR issued regulations to implement Sections 254, 264, 264-A, 264-B and 265-A of the Tax Code, as amended by Sections 76 to 80 of Republic Act (RA) No. 10963, otherwise known as the TRAIN Law.

The offenses include the following:

- Willful attempt to evade or defeat any tax or the payment
- Commission of violations related to the printing of receipts or invoices
- Failure to transmit sales data to the BIR electronic sales reporting system
- Purchase, use, possess, sell, or offer to sell, install, transfer, update, keep or maintain any software or device designed for or capable of suppressing the creation of, modifying, hiding or deleting electronic records of sale transactions
- Offenses/violations related to fuel marking and corresponding penalties

- Issuance by a person authorized, licensed or accredited to conduct fuel tests of false or fraudulent fuel tests results

Tax Payment Certificate issued by the DTI-BOI under the CARS Program

Revenue Regulations No. 12-2021

The CIR prescribed the following policies and guidelines on the utilization of Tax Payment Certificates (TPCs) issued by the Department of Trade and Industry-Board of Investment (DTI-BOI), which evidence the fiscal support availment of eligible and registered participants of the Comprehensive Automotive Resurgence Strategy (CARS) Program under Executive Order No. 182-2015:

- TPCs should be requested before the statutory deadline for the payment of the covered taxes sought to be settled.
- All TPS are non-transferable and shall be valid for 30 days from the date of issuance and can only be used once. The date on the TPC's face shall be the presumed date of issuance.
- The amount of the TPC shall be indicated in the tax return as a deduction against the tax due.
- Eligible and registered participants under the CARS Program are not allowed to register their activity under any other program granting incentives.

BIR implementation rules and regulations of the FIST Act

Revenue Regulations No. 11-2021

The BIR has issued its own implementing rules and regulations of Republic Act (RA) No. 11523 or the FIST Act which cover the following:

- Registration and other tax compliance requirements of a Financial Institutions Strategic Transfer Corporation (FISTC)
- Transactions that are exempt from taxes and entitled to fee privileges
- Tax exemptions:
 - ✓ Documentary stamp tax (DST) on any document evidencing the transfer or dation in payment
 - ✓ Capital gains tax on the transfer of land and/or buildings treated as capital assets
 - ✓ Creditable withholding income taxes on the transfer of land and/or buildings treated as ordinary assets
 - ✓ Value-added tax (VAT) on the transfer of non-performing assets (NPAs) or gross receipts tax

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- Additional tax exemptions for an FISTC:
 - ✓ Income tax exemption of net interest income arising from new loans
 - ✓ DST exemption of any document evidencing new loans
 - ✓ DST exemption of any document evidencing an FISTC's capital infusion to the borrower's business with an NPL acquired from an FI from 18 February 2021 to 18 February 2023

The above additional exemptions shall apply only for 5 years from the date of acquisition of the borrower's NPL by the said FISTC.

- With respect to FIs, any loss incurred as a result of the transfer of an NPA from 18 February 2021 to 18 February 2023 shall be treated as an ordinary loss which may be carried over for five years.

Such net operating loss carry-over (NOLCO) shall be presented in the notes to the financial statements separately from NOLCO incurred for other taxable activities.

- All sales or transfers of NPAs from FIs to an FISTC or individual which is not a "true sale" shall not qualify for exemption.
- Tax treatment of Investment Unit Instruments (IUIs)
- Importance of the COE
- Transfers of real property or shares of stock

Within 30 days after the issuance of a COE covering the transfer of real properties or shares of stock, a capital gains tax (CGT) return with the COE and other requirements shall be filed with the concerned Revenue District Office.

Excise tax on removal of sweetened beverages products for export

Revenue Regulations No. 10-2021

The CIR amended Revenue Regulations (RR) No. 20-2018 regarding the sweetened beverages products intended for export as follows:

- The removal of sweetened beverages products intended for export shall already be subject to the payment of excise tax by the manufacturer on every removal from the place of production.
- After payment of the excise tax, the manufacturer can either:
 1. File a claim for excise tax credit/refund; or
 2. Avail of a claim for product replenishment scheme.
- The posting of a surety bond was removed from the terms and conditions.

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VAT-zero rated transactions that are already subject to 12% VAT

Revenue Regulations No. 9-2021

Following the announcement by the CIR that the conditions required under Sections 106(A)(2)(a) and 108(B) of the Tax Code have already been fully satisfied, the following transactions previously treated as VAT zero-rated were declared as subject to the 12% VAT:

1. Section 106(A)(2) of the Tax Code

- a. Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
- b. Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed 70% of total annual production; and
- c. Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

2. Section 108(B) of the Tax Code

- a. Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for, in accordance with the rules and regulations of the BSP; and
- b. Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed 70% of total annual production.

Implementing the VAT and percentage tax amendments under CREATE

Revenue Regulations No. 8-2021

In light of the Tax Code amendments introduced by Republic Act No. 11534 or CREATE, the CIR amended Revenue Regulations (RR) No. 4-2021 (amending RR No. 16-2005) as follows:

- The VAT-exempt threshold for the sale of house and lot and other residential dwellings under Section 109(P) of the Tax Code should also be adjusted to PhP3,199,200.00 beginning 1 January 2021.

- The importation of COVID-19 related capital equipment, drugs, vaccines, medical devices and raw materials under Section 109(BB) of the Tax Code shall not be subject to the issuance of an Authority to Release Imported Goods (ATRIG), and may be released by the Bureau of Customs without need of an ATRIG.
- Percentage taxpayers who overpaid taxes because of the decrease of the percentage tax rate from 3% to 1% starting 1 July 2020 until the effectivity of RR No. 4-2021 can claim a tax refund in the event that:
 - a. The taxpayer shifted from non-VAT to VAT-registered status; or
 - b. The taxpayer opted to avail the 8% income tax rate at the beginning of taxable year 2021.

Clarifying certain provisions of RMO No. 14-2021

Revenue Memorandum Circular No. 77-2021

The CIR addressed frequently asked questions as follows regarding the availment of tax treaty benefits and clarified certain provisions of Revenue Memorandum Order (RMO) No. 14-2021:

- To establish the fact of residency, the nonresident income recipient should submit a Tax Residency Certificate (TRC) duly issued by the tax authority of its country of residence.
- The income payor-withholding agent is required to file a request for confirmation. The income payor may authorize the nonresident or any other person to file the request for confirmation for and on its behalf.
- With respect to long-term contracts involving interests, royalties and other income type where the condition for entitlement is not dependent on time threshold, the BIR will issue a one-time certification.
- To prove that an item of income is not effectively connected with its permanent establishment (PE) in the Philippines, the foreign enterprise may submit the audited financial statements (FS) of the PE or if said audited FS are not yet available, a Sworn Certification.
- For capital gains transactions, the BIR prefers the submission of audited interim FS. Alternatively, the unaudited interim FS and lapsing schedule may be submitted.
- In the submission of additional documents, an extension of up to a maximum of 30 days may be granted.
- Taxpayers with pending Tax Treaty Relief Applications (TTRAs) prior to the effectivity of RMO No. 14-2021 will still receive Final Notices to Submit Additional Documents and will have three months from receipt thereof to comply.

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On the other hand, taxpayers who have been notified of archival will no longer receive said Final Notice but may submit the requirements within four months from effectivity of RMO No. 14-2021.

- For TTRAs involving interests, dividends and royalties filed before the effectivity of RMO No. 8-2017, a Compliance Check Report may be issued.
- For income payments in 2020 and prior years without filed TTRAs or Certificate of Residence for Tax Treaty Relief Forms, the withholding agent has until the last working day of 2021 to file a request for confirmation with complete documentary requirements.
- For dividends, the certified true copy of the audited FS as of the taxable year immediately preceding the date of declaration, which audited FS was duly filed with the BIR and the Securities and Exchange Commission should be submitted.

Use of BIR Form No. 0605 for excise tax purposes

Revenue Memorandum Circular No. 75-2021

The CIR amended Revenue Memorandum Circular No. 97-2020 regarding the standard policy for using BIR Form No. 0605 for excise tax purposes. Hence, BIR Form No. 0605 should be filled up as follows:

1. Excise taxpayers making advance payments for export products availing the Product Replenishment Scheme should tick the “Tax Deposit/Advance Payment” box under Field No. 17.
2. Excise taxpayers under Non-Essential Services for Cosmetic Procedures should use BIR Form No. 2200-C.
3. Excise taxpayers using BIR Form No. 0605 paying deficiency taxes should tick the “Preliminary/Final Assessment/Deficiency Tax” box under Field No. 17.
4. Payments for administrative penalties must tick the “Others (Specify)” under Field No. 17 and indicate “Administrative Penalties” in the box provided.

All other excise tax payments in domestic removals of excisable articles shall use their corresponding excise tax returns (BIR Form No. 2200 series).

BIR Announcements

Revenue Memorandum Circular Nos. 73-2022, 72-2021 and 71-2021

The Commissioner of Internal Revenue announced the availability of the following:

- A. New Business Registration (NewBizReg) Portal

The NewBizReg Portal is a gateway for the electronic submission of applications for registration through electronic mail (email).

B. Single Hotline Number and Use of REVIE

The BIR Customer Assistance Division Hotline Number (02) 8538-3200 and REVIE, a Chatbot, are already available to assist taxpayer inquiries. REVIE is a Digital Assistant accessible 24/7 from the home page of www.bir.gov.ph that can answer questions involving registration requirements, eServices, BIR Forms, zonal values and taxpayer identification number verification.

C. Online Survey Form under the Client Support Service

The Online Survey aims to identify and measure taxpayer satisfaction for each frontline service. It can be accessed through the following:

1. Designated personal computers in the eLounge area; or
2. Quick Response (QR) code available at each counter using mobile phone.