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

Revenue Regulations

None

Revenue Memorandum Circulars

Revenue Memorandum Circular No. 103-2021 dated October 1, 2021

Publishing the Full Text of the Letters from the Food and Drug Administration and the Department of Health Containing Updates to the List of VAT-Exempt Products under Republic Act Nos. 10963, 11467, and 11534

This Circular updates and supplements Revenue Memorandum Circular No. 81-2021, which published the consolidated list of VAT-exempt products and has become the controlling list insofar as the VAT exemption of items under Sections 109(1)(AA) and 109(1)(BB)(ii) of the Tax Code of 1997, as amended, is concerned.

Revenue Memorandum Circular No. 105-2021 dated October 4, 2021

Circularizes Memorandum Circular No. 89 issued by the Office of the President entitled “Updating the Inventory of Exceptions to the Right to Access of Information Under Executive Order (EO) No. 02, Series of 2016”

Exceptions to the Right of Access to Information

Memorandum Circular (MC) No. 89 issued by the Office of the President enumerated the following exceptions to the right of access to information, as recognized by the Constitution, existing laws, or jurisprudence:

1. Information covered by Executive privilege;
2. Privileged information relating to national security, defense or international relations;
3. Information concerning law enforcement and protection of public and personal safety;
4. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused;
5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals,

- boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
6. Prejudicial premature disclosure;
 7. Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged;
 8. Matters considered confidential under banking and finance laws and their amendatory laws; and
 9. Other exceptions to the right to information under laws, jurisprudence, rules and regulations.

Information known by reason of official capacity and are deemed confidential

The relevant information that are exempt from the Right of Access to Information under Exception No. 5 include, but are not limited to, the following:

- a. Trade secrets, intellectual property, business, commercial, financial and other proprietary information;
- b. Records and reports submitted to the Social Security System by the employer or member;
- c. Information of registered persons with the Philippine Identification System;
- d. Confidential information submitted to the Philippine Competition Commission prohibited from disclosure by law, including the identity of the person who provided the information under condition of anonymity;
- e. Applications and supporting documents filed pursuant to the Omnibus Investments Code of 1987;
- f. Information obtained from accessing any electronic key, electronic data message, or electronic document, book, register, correspondence, information or other material pursuant to any powers conferred under the Electronic Commerce Act of 2000;
- g. Any confidential information supplied by the contractors in mineral agreements, and financial or technical assistance agreements pursuant to the Philippine Mining Act of 1995 and its Implementing Rules and Regulations, during the term of the project to which it relates;
- h. The fact that a covered transaction report to the Anti-Money Laundering Council has been made, the contents thereof, or any information in relation thereto;
- i. Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;
- j. Certain information and reports submitted to the Insurance Commissioner pursuant to Section 297 of the Insurance Code; and
- k. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals.

Matters considered confidential under banking and finance laws

The pertinent laws are as follows:

- a. Republic Act (RA) No. 1405 (Law on Secrecy of Bank Deposits);
- b. RA No. 6426 (Foreign Currency Deposit Act of the Philippines) and relevant regulations;
- c. RA No. 8791 (The General Banking Law of 2000);
- d. RA No. 9160 (Anti-Money Laundering Act of 2001); and
- e. RA No. 9510 (Credit Information System Act).

Revenue Memorandum Circular No. 106-2021 dated October 13, 2021

Circularizes the Updated List of Microfinance Non-Government Organizations (MF-NGOs) Accredited by the Microfinance NGO Regulatory Council (MNRC) as of August 2021

Updated List of Accredited MF-NGOs

Accredited MF-NGOs for 2019			
Name of MF-NGO	Certificate of Accreditation No.	Date of Issuance	Date of Prior MNRC Accreditation
1. ALALAY SA KAUNLARAN MICROFINANCE SOCIAL DEVELOPMENT, INC.	0001-19	01-Mar-19	28-Mar-18
2. ASA PHILIPPINES FOUNDATION, INC. (A MICROFINANCE NGO)	0002-19	01-Mar-19	28-Mar-18
3. CORDILLERA COMMUNITY MICROFINANCE (CCMI), INC.	0003-19	01-Mar-19	11-Jul-18
4. JAIME V. ONGPIN MICROFINANCE FOUNDATION, INC.	0004-19	01-Mar-19	N/A
5. JMH MICROFINANCE, INC.	0005-19	01-Mar-19	28-Mar-18
6. KABALIKAT PARA SA MAUNLAD NA BUHAY, INC. (A MICROFINANCE NGO)	0006-19	01-Mar-19	28-Mar-18
7. KAZAMA GRAMEEN MICROFINANCE, INC.	0007-19	01-Mar-19	28-Mar-18
8. LIFEBANK MICROFINANCE FOUNDATION, INC. DOING BUSINESS UNDER THE NAME AND STYLE OF LIFEBANK FOUNDATION	0008-19	01-Mar-19	28-Mar-18
9. RANGTAY SA PAGRANG-AY MICROFINANCE, INC.	0009-19	01-Mar-19	28-Mar-18
10. SAKLAW FOUNDATION INC. (A MICROFINANCE NGO)	0010-19	01-Mar-19	28-Mar-18
11. SEDP-SIMBAG SA PAG-ASENSO, INC. (A MICROFINANCE NGO) DOING BUSINESS UNDER THE NAME AND STYLE OF SEDP-SIMBAG MICROFINANCE	0011-19	01-Mar-19	28-Mar-18

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(FORMERLY: SEDP-SIMBAG SA PAG-ASENSO, INC. (A MICROFINANCE NGO) DOING BUSINESS UNDER THE NAME AND STYLE OF SEDPSIMBAG)			
12. SURIGAO ECONOMIC DEVELOPMENT AND MICROFINANCE FOUNDATION, INC.	0012-19	01-Mar-19	28-Mar-18
13. ARDCI MICROFINANCE INCORPORATED	0013-19	21-Mar-19	28-Mar-18
14. BAYAN ENTERPRISE DEVELOPERS, GROWERS AND EVOLVERS-MICROFINANCE AND BUSINESS SERVICES, INC.	0014-19	21-Mar-19	28-Mar-18
15. ECLOF PHILIPPINES MICROFINANCE, INC.	0015-19	21-Mar-19	28-Mar-18
16. PAGASA SA MASANG PINOY MICROFINANCE, INC.	0016-19	21-Mar-19	28-Mar-18
17. RAFI MICRO-FINANCE, INC.	0017-19	21-Mar-19	28-Mar-18
18. SERVIAMUS FOUNDATION INCORPORATED DOING BUSINESS UNDER THE NAME AND STYLE OF SERVIAMUS MICROFINANCE	0018-19	21-Mar-19	28-Mar-18
19. ST. ELIZABETH COMMUNITY DEVELOPMENT PROGRAM (SECDEP), INC. (A MICROFINANCE NGO)	0019-19	21-Mar-1	28-Mar-18
20. CENTER FOR AGRICULTURE AND RURAL DEVELOPMENT (CARD), INC. (A MICROFINANCE NGO)	0020-19	21-Mar-19	28-Mar-18
21. AHON SA HIRAP, INC. (A MICROFINANCE NGO)	0021-19	28-Mar-19	11-Jul-18
22. COMMUNITY ECONOMIC VENTURES, (A MICROFINANCE NGO) INC.	0022-19	28-Mar-19	28-Mar-18
23. KASANYANGAN CENTER FOR COMMUNITY DEVELOPMENT AND MICROFINANCE FOUNDATION, INC.	0023-19	28-Mar-19	28-Mar-18

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24.	NEGROS WOMEN FOR TOMORROW FOUNDATION, INC. (A MICROFINANCE NGO) DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF NEGROS WOMEN FOR TOMORROW FOUNDATION, INC. OR NWTF	0024-19	28-Mar-19	28-Mar-18
25.	TAYTAY SA KAUSWAGAN (A MICROFINANCE NGO), INC.	0025-19	28-Mar-19	28-Mar-18
26.	PEOPLE'S ALTERNATIVE LIVELIHOOD MICROFINANCE FOUNDATION OF SORSOGON (PALMFS), INC.	0026-19	15-May-19	28-Mar-18
27.	TULAY SA PAG-UNLAD, INC. (A MICROFINANCE NGO)	0027-19	15-May-19	28-Mar-18
28.	KATUWANG RESOURCE CENTER, INC. (A MICROFINANCE NGO)	0028-19	14-Jun-19	11-Jul-18
29.	USWAG DEVELOPMENT FOUNDATION, INC. (A MICROFINANCE NGO)	0029-19	10-Dec-19	N/A

Accredited MF-NGOs for 2020

	Name of MF-NGO	Certificate of Accreditation No.	Date of Issuance	Date of Prior MNRC Accreditation
1.	KPS-SMALL ENTERPRISE AND ECONOMIC DEVELOPMENT, MICROFINANCE, INC.	0001-20	27-Jan-20	28-Mar-18

Accredited MF-NGOs for 2021

	Name of MF-NGO	Certificate of Accreditation No.	Date of Issuance	Date of Prior MNRC Accreditation
1.	URBAN PROGRAM FOR LIVELIHOOD FINANCE & TRAINING (UPLIFT) PHILIPPINES MICROFINANCE INC.	0001-21	29-Jan-21	28-Mar-18
2.	SPES PAUPERUM FOUNDATION (SPFI) MICROFINANCE NGO, INC.	0002-21	25-Aug-21	28-Mar-18

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Under the Implementing Rules and Regulations of Republic Act No. 10693 (Microfinance NGO Act), a Certificate of Accreditation shall be valid for a period of three (3) years from the date of issuance, unless revoked by the MNRC on an earlier date.

Revenue Memorandum Circular No. 107-2021 dated October 18, 2021

Circularizes Republic Act No. 11590 titled “An Act Taxing Philippine Offshore Gaming Operations, Amending for the Purpose Sections 22, 25, 27, 28, 106, 108 and Adding New Sections 125-A and 288(G) of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes”

Definitions

Section 22 of the Tax Code, as amended, is further amended to include the following definitions:

- a. Section 22 (II) defines **Offshore Gaming Licensee** as the offshore gaming operator, whether organized abroad or in the Philippines, duly licensed and authorized, through a gaming license, by the Philippine Amusement and Gaming Corporation or any special economic zone authority or tourism zone authority or freeport authority to conduct offshore gaming operations, including the acceptance of bets from offshore customers, as provided for in their respective charters.

For purposes of this Section, an offshore gaming licensee shall be considered engaged in doing business in the Philippines.

- b. Section 22 (JJ) defines **Offshore Gaming Licensee-Gaming Agent** as the representative in the Philippines of an offshore-based operator who shall act as a resident agent for the mere purpose of receiving summons, notices and other legal processes for the offshore gaming licensee and to comply with the disclosure requirements of the Securities and Exchange Commission. The offshore gaming licensee-gaming agent shall not be involved with the business operations of the offshore gaming licensee and shall derive no income therefrom.

Tax on Alien Individuals

Section 25 of the Tax Code, as amended, on tax on alien individuals (regardless of residency and are employed and assigned in the Philippines), is further amended to include subsection (G) on alien individuals employed by an offshore gaming licensee or its service providers:

- a. Tax Rate – Final withholding tax of **twenty-five percent (25%)** on their gross income, provided that the minimum final withholding tax due for any taxable month from said persons shall not be lower than twelve thousand five hundred pesos (P12,500.00).

The tax imposed herein shall be withheld and remitted in accordance with the provision of this Code and failure to do so shall be governed by this Code.

- b. Gross Income – In computing the tax provided in this section, gross income shall include, whether in cash or kind, basic salary/wages, annuities, compensation, remuneration and other emoluments, such as honoraria and allowances, received from such service provider or

offshore gaming licensee. All offshore gaming licensees and service providers shall submit to the Bureau of Internal Revenue the original copy of notarized contract of employment clearly stating therein the annual salary and other benefits and entitlements of the concerned alien.

Any income earned from all other sources within the Philippines by the alien employee referred to under this Subsection shall be subject to the pertinent income tax imposed under this Code.

- c. Rules and Regulations – For the efficient assessment, verification, and administration of taxes imposed in this Section, the Bureau of Immigration, the Department of Labor and Employment, the Bureau of Internal Revenue, the Securities and Exchange Commission, the Philippine Amusement and Gaming Corporation, and any special economic zone authority, tourism zone authority, freeport authority, as provided for in their respective charters, shall issue joint and consolidated rules and regulations, including the issuance of a gaming employment license by the concerned agency, for the implementation of free and efficient exchange of information among the said agencies in relation to the proper payment of taxes by persons covered under this Section.
- d. Tax Identification Number – All foreign employees of offshore gaming licensees and their service providers, regardless of nature of employment, shall have a tax identification number.

All offshore gaming licensees and service providers that employ or engage a foreign national without the foregoing shall be liable for a fine of twenty thousand pesos (P20,000.00) for every foreign national without such tax identification number and, in proper instances, revocation of their primary and other licenses obtained from government agencies and/or perpetual or temporary ban in employing or engaging foreign nationals for their operations: Provided, That the foreign national concerned shall still pay, and the employer shall remit, any corresponding taxes, penalties, interests, and surcharges due in accordance with this Code.

- e. Deportation – The alien concerned may be subject to deportation and may be barred from reentering the Philippines, or blacklisted as a foreign employee by the Department of Labor and Employment, Bureau of Immigration, and other relevant agencies.

Income Tax Rates on Offshore Gaming Licensees - Domestic Corporations

Under Section 27(F) of the Tax Code, as amended, the non-gaming revenues derived within the Philippines of Philippine-based Offshore Gaming Licensees shall be subject to an income tax equivalent to **twenty-five percent (25%)** of the taxable income derived during each taxable year from all sources within and without the Philippines.

Under Section 27 (G), Accredited Service Providers to Offshore Gaming Licensees shall not be subject to the gaming tax imposed by the Section 125-A but shall pay such rate of tax as imposed in Section 27(A) of this Code, and shall be subject to all other applicable local and national taxes.

For purposes of this Section, an accredited service provider to an offshore gaming licensee ('service provider') shall be a juridical person that is duly created or organized within or outside the Philippines or a natural person, regardless of citizenship or residence, which provides ancillary services to an offshore gaming licensee as defined by Section 22(II) of the Tax Code or to any gaming licensee or operator with licenses from other jurisdictions. Such ancillary services may include, but shall not be

limited to, customer and technical relations and support, information technology, gaming software, data provision, payment solutions, and live studio and streaming services.

Income Tax Rates on Offshore Gaming Licensees - Foreign Corporations

Under Section 28 (A) (7) of the Tax Code, as amended, the non-gaming revenues derived within the Philippines of foreign-based Offshore Gaming Licensees shall be subject to an income tax equivalent to **twenty-five percent (25%)** of the taxable income derived during each taxable year.

Value-Added Tax (VAT)

- a. VAT on Sales of Goods or Properties to Offshore Gaming Licensees – Section 106 (A) (2) (c) of the Tax Code, as amended, imposes **zero percent (0%) VAT** on sales to offshore gaming licensees subject to gaming tax under Section 125-A of the Tax Code, as amended
- b. VAT on Sale of Services rendered to Offshore Gaming Licensees - Section 108 (B) (9) of the Tax Code, as amended, imposes **zero percent (0%) VAT** on services rendered to offshore gaming licensees subject to gaming tax under Section 125-A of the Tax Code, as amended, by service providers, including accredited service providers.

Gaming Tax on Services Rendered by Offshore Gaming Licensees

A new section designated as Section 125-A of the Tax Code, as amended, was added to impose a Gaming Tax on services rendered by offshore gaming licensees:

- a. Tax Rate – A gaming tax equivalent to **five percent (5%)** shall be imposed on the entire gross gaming revenue or receipts or the agreed predetermined minimum monthly revenue or receipts from gaming, whichever is higher, in lieu of all other direct and indirect internal revenue taxes and local taxes, with respect to gaming income.
- b. Period – The gaming tax shall be directly remitted to the Bureau of Internal Revenue (BIR) **not later than the 20th day following the end of each month**: Provided, further, That the Philippine Amusement and Gaming Corporation or any special economic zone authority or tourism zone authority or freeport authority may impose regulatory fees on offshore gaming licensees which shall not cumulatively exceed two percent (2%) of the gross gaming revenue or receipts derived from gaming operations and similar related activities of all offshore gaming licensees or a predetermined minimum guaranteed fee, whichever is higher.
- c. Gross gaming revenue or receipts – gross gaming revenue or receipts shall refer to gross wagers less payouts.
- d. Revocation of License – The taking of wagers made in the Philippines and the grave failure to cooperate with the third-party auditor shall result in the revocation of the license of the offshore gaming licensee.
- e. Third-Party Audit Platform – The Philippine Amusement and Gaming Corporation or any special economic zone authority or tourism zone authority or freeport authority shall engage

the services of a third-party audit platform that would determine the gross gaming revenues or receipts of offshore gaming licensees.

To ensure that the proper taxes and regulatory fees are levied, periodic reports about the results of the operation showing, among others, the gross gaming revenue or receipts of each offshore gaming licensee shall be submitted to the Bureau of Internal Revenue by the Philippine Amusement and Gaming Corporation or any special economic zone authority or tourism zone authority or freeport authority as certified by their third-party auditor.

The third-party auditor shall be independent, reputable, internationally-known, and duly accredited as such by an accrediting or similar agency recognized by industry experts: Provided, finally, That nothing herein shall prevent the Bureau of Internal Revenue and the Commission on Audit from undertaking a post-audit or independent verification of the gross gaming revenues determined by the third-party auditor.

Disposition of Incremental Revenues

A new section designated as Section 288(G) of the Tax Code, as amended, was added for the disposition of incremental revenues from gaming tax on offshore gaming licensees. Under this provision, **sixty percent (60%)** of the total revenue collected from the gaming tax imposed on offshore gaming licensees shall be allocated and used exclusively in the following manner:

- a. For the implementation of Republic Act No. 11223, otherwise known as the 'Universal Health Care Act' – **Sixty percent (60%)**
- b. To the Health Facilities Enhancement Program (HFEP), the annual requirements of which shall be determined by the Department of Health – **Twenty percent (20%)**
- c. For the attainment of the Sustainable Development Goals (SDGs) - **Twenty percent (20%)**

Revenue Memorandum Circular No. 108-2021 dated October 14, 2021

Clarification of Certain Issues on the Utilization of Tax Payment Certificate (TPC) Issued Under the Comprehensive Automotive Resurgence Strategy (CARS) Program

Authentication of the TPC by the BIR

The hard copies of the tax returns and the corresponding attachments (including the TPC) are submitted to the Revenue District Office where the taxpayer is duly registered within a prescribed period according to the filing and payment facilities availed of by the taxpayer. Thus, the authorized BIR personnel shall authenticate the TPC only after receipt of its hard copy together with the returns to which it was attached.

If the TPC is found to be spurious, the ERP (Eligible and Registered Participant) shall be liable for the amount of the tax still due. In addition to this, the ERP may also be liable for the penalties for failure to pay the tax without prejudice to civil or criminal actions against the ERP.

The receipt of TPC is not taxable

The TPC is intended for payment of taxes and if not presented or utilized for tax payment, the TPC shall be forfeited in favor of the government.

A TPC shall not be used as payment for the quarterly income tax due and for payment of the monthly VAT due

A TPC shall not be used as payment for the quarterly income tax due and for payment of the monthly VAT due. Income tax liability is finally determined at the end of the taxable year. The TPC is submitted to the BIR as an attachment to the annual income tax return. Similarly, the TPC shall be used as payment for the VAT due declared in the quarterly returns, such being a final return.

Documents that should be attached by the ERP (Eligible and Registered Participants) to the excise tax return for removal of automobiles that are covered by the CARS Program

The following documents should be attached by the ERP:

1. The TPC; and
2. Detailed Schedule of Removals of Automobiles as a breakdown to Schedule 1A under Part V of the excise tax return (BIR Form No. 2200-AN).

TPC details in the tax return

The TPC details should be written in the item “Others” or “Others (specify)” and under the “Details of Payment” at the lower portion of the tax return.

A TPC may not be used as an advance payment or deposit for excise tax due and for payment of deficiency tax liability

The TPC shall not be used as advance payment or deposit for excise tax due and for payment of deficiency tax liability. Under item 6.3 of DOF-DBM-DTI-BOI Joint Administrative Order No. 01-2015, the issuance of a TPC by the DTI-BOI is based on the statutory deadline for payment of tax and/or duty.

Utilization of the TPC as payment stops the running of the period of validity of TPC

The details of the TPC are declared in the tax return with its amount applied against the tax due and copies of the tax return and TPC are filed with the RDO. The utilization of the TPC thus stops the running of the period of validity.

Revenue Memorandum Circular No. 111-2021 dated October 20, 2021

Availability of Offline Electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version 7.9.2

This Circular is being issued to disseminate the availability of the Offline eBIRForms Package Version 7.9.2.

The following forms are now included in the eBIRForms Package:

- BIR Form No. 2552 - Percentage Tax Return for Transactions Involving Shares of Stock Listed and Traded Through the Local Stock Exchange or Through Initial and/or Secondary Public Offering;
- BIR Form No. 1600-VT – Monthly Remittance Return of Value-Added Tax Withheld;
- BIR Form No. 1600-PT – Monthly Remittance Return of Other Percentage Taxes Withheld;
- BIR Form No. 1707 – Capital Gains Tax Return for Onerous Transfer of Shares of Stocks Not Traded Through the Local Stock Exchange; and

- BIR Form No. 2200-C – Excise Tax Return for Cosmetic Procedures

Payment of the taxes due shall be made through the following modes:

1. Manual Payment
 - a. Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Revenue District Office (RDO) where the taxpayer is registered; or
 - b. In places where there are no AABs, the return shall be filed and the corresponding tax due thereon shall be paid to the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer is registered using the Mobile Revenue Collection Officer System (MRCOS) facility.

2. Online Payment
 - a. Land Bank of the Philippines (LBP) Link.BizPortal – for taxpayers who have Automated Teller Machine (ATM) account with LBP and/or holders of Bancnet ATM/Debit Card;
 - b. Development Bank of the Philippines (DBP) Tax Online – for taxpayer-holders of Visa/Master Credit Card and/or Bancnet ATM Debit Card;
 - c. Union Bank Online Web and Mobile Payment Facility – for taxpayers who have accounts with Union Bank;
 - d. PESONet through LBP Link.BizPortal – for taxpayers who have accounts with Rizal Commercial Banking Corporation (RCBC), Robinsons Bank, Union Bank and Bank of the Philippine Islands (BPI); or
 - e. Mobile Payment (GCash/PayMaya).

Revenue Memorandum Orders

Revenue Memorandum Order No. 28-2021 dated October 26, 2021

Amends certain provisions of RMO No. 22-2020 relative to the policies, guidelines and procedures in the handling/resolution of concerns/complaints received thru the 8888 Citizen's Complaint Center, Presidential Complaint Center, BIR eComplaint System, Contact Center ng Bayan, Anti-Red Tape Authority and other feedback mechanisms

Classification	Concerned Office	Monitoring Office
I. Concerns/Complaints Against BIR Policies/Services/Personnel		
A. Systems Related		
A.1 Problems on eServices	Concerned Revenue Data Center	Information Systems Development and Operations Service; and/or Information Systems Project Management Service
B. Non-Systems Related		
B.1 Registration / Frontline Service-related transactions (excluding ONETT-related transactions)	Office being complained or where the person/s being complained is/are assigned	Client Support Service
B.2 ONETT-related transactions		Assessment Service

B.3 Tax Refund/Tax Exemption		
B.4 Tax Clearance		Collection Service
C. "Disiplina"/People Related Concerns		
C.1 Allegations of Misdemeanor; Discourtesy; Fixing, Lost of Docket/Documents and other similar accusations	Office being complained or where the person/s being complained is/are assigned	Regional Investigation Division/ Internal Affairs Service
C.2 Graft & Corruption / Extortion		DCIR Legal Group – if the official being complained is RD or ACIR
C.3 Non-compliance with Citizen's Charter and other ARTA requirements (i.e. Nonobservance of No Noon-Break Policy, Unavailability of Signatory/Officer-of-the-day, Unattended hotline, Inaction to Complaints/Requests Filed within the prescribed processing period; Imposition of Additional Cost, etc.)		Client Support Service
D. Tax Audit Related Concerns		
D.1 Legal Petition Notices; Demand Letters; and other Tax Audit Related Concerns	Office where the person/s being complained is/are assigned	<u>Revenue Region</u> - if the official being complained is from RDO <u>Large Taxpayer Service</u> - if the official being complained is from offices under LTS
II. Concerns/Complaints Against Business Establishments/AABs/Other Private Entities		
A. Tax Payment Related		
A.1 Payment made thru AABs and other external payment channels (i.e. GCash, Paymaya, etc.)	Collection Performance Monitoring Division; and Collection Programs Division	Collection Service
B. Taxpayer Violations		
B.1 No OR/SI, Unlawful pursuit of business, Non-remittance of Withholding Tax by a Withholding Agent, Nonrefunding of Withholding Agent, Non-granting of PWD/Senior Citizen Discount, and Other Tax Evasion	Revenue District Office having jurisdiction over the Entity / Individual / Withholding Agent committing Tax Evasion Activity	Regional Investigation Division; and Enforcement and Advocacy Service

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Activities by a private individual/entity		
III. Others (Not complaints)		
A. Commendation	Office Commended or where the person/s commended is/are assigned	<u>Human Resource Development Service</u> - if the personnel being commended is assigned in the National Office; or Administrative and Human <u>Resource Management Division</u> - if the personnel being commended is assigned in the Regional Office or RDO
B. Suggestion	Office having jurisdiction over the suggested concern	Regional Office/Service having jurisdiction over the concern
C. Request for Assistance	Office having jurisdiction over the requested concern	
D, Inquiry	Office having jurisdiction over the requested concern	

Further, anonymous complaints or denunciation with no contact information that identifies the office and/or personnel being complained shall be deemed closed.

Revenue Memorandum Order No. 29-2021 dated October 29, 2021

Monitoring and Verification of the Tax Compliance of Online Merchants / Social Media influencers (SMI) / Other Businesses Operating in Digital Platforms

This Order is issued to direct all Revenue District Offices (RDOs) under all Revenue Regions (RRs) and the LT Divisions (LTDs)/LT Audit Divisions (LTADs, Regular or Excise) under the Large taxpayers Service (LTS) to monitor and verify the tax compliance of online merchants, SMIs and other businesses operating through digital or online platforms (hereinafter referred to as “subject taxpayers”) who are registered or residing within their jurisdictions.

The BIR created a Special Task Force (STF) in every revenue regional office and in the LTS for the following tasks:

- I. Creation of a database of all online sellers, SMIs registered or residing within their jurisdictions, and properties leased by online lessors;
- II. Determine whether such taxpayers are registered with the BIR. If registered, the task force shall evaluate and ensure tax compliance. After evaluation, the STF shall then prepare a list of taxpayers who shall be recommended for the issuance of a Letter of Authority;
- III. For unregistered taxpayers, the task force shall notify them to register and voluntarily pay unpaid taxes due on past transactions. If they do not pay within the prescribed time in the notice, the STF shall endorse the case to the RID or NID for the conduct of preliminary investigation which may warrant the issuance of a LOA for the filing of a Run After Tax Evaders (RATE) case and/or other actions; and

- IV. To submit a Monthly Accomplishment Report (MAR) to their Respective Regional Directors and Assistant Commissioner (ACIR)-LTS, on or before the 5th day of the following month.

The voluntary declarations made by the taxpayers shall be verified through the exchange of information (EOI) mechanism under valid tax treaties if applicable. If there are discrepancies, the STF shall recommend to the concerned office the issuance of LOAs against the taxpayers. After obtaining the LOA, the STF shall initiate a request for information from a treaty partner through the EOI unit of the International Tax Affairs Division (ITAD) to verify the truthfulness of the information as prescribed by RMO No. 26-2020.

Supreme Court Decisions

None.

Court of Tax Appeals Decisions

A. CTA En Banc Cases

CIR v. Ayala Land International Sales, Inc., CTA EB No. 2017 (CTA Case No. 9262), October 19, 2021

The CTA repeated the same rule in the *Next Mobile Case* that a defective waiver executed by the taxpayer shall be valid if the parties (*i.e.*, the taxpayer and the BIR) are both at fault.

In this case, the first waiver was defective, but the taxpayer still continued to execute waivers and deal with the BIR. On the other hand, the BIR did not bring up the fact that the waivers were defective. Moreover, the taxpayer raised the defense of defective waiver only during the appeal, and not during the PAN and FAN stages. Hence, the CTA declared the waiver valid.

CIR v. Clark Water Corporation, CTA EB No. 2218 (CTA Case No. 8648), October 12, 2021

The failure of the BIR to deliver a copy of the PAN and FAN to the taxpayer is a violation of the taxpayer's right to due process. The fact that the BIR has sent its PAN and FAN *via* registered mail is not enough to satisfy the requirements of due process. It must also prove that the said PAN and FAN were duly received by the taxpayer.

Furthermore, a Preliminary Collection Letter and a Warrant of Distraint and/or Levy issued on the basis of the defective PAN and FAN are also defective.

B. CTA Division Cases

Philippine Airlines, Inc. v. CIR, CTA Case No. 9990, October 21, 2021

Filing the judicial claim for refund with the CTA within one (1) day from the filing of the administrative claim with the BIR does not satisfy the exhaustion of administrative remedies rule. The 2-year prescription rule in Section 229 of the Tax Code is not enough to justify the instant appeal of the case to the CTA. The taxpayer must give the BIR the ample time and opportunity to rule on the administrative claim before appealing the claim with the CTA.

In addition, in the case of the airlines industry's (especially Philippine Airlines) excise tax exemption on the importation of commissary and catering supplies, the following must be proven for the grant of such exemption:

1. It paid corporate income tax and VAT liabilities covering the period when the subject importations were made;
2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and
3. The imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

For the third condition, it is not enough that the taxpayer presents only one (1) price list to prove that the product is not locally available. The CTA emphasized that the taxpayer must prove the non-availability of the product, not the non-availability of the price or quotation.

William R. Villarica v. CIR, CTA Case No. 9343, October 21, 2021

Tax laws do not prohibit the practice of issuing LOAs covering more than one (1) taxable period. What the law prohibits is the practice of issuing LOAs assessing "unverified prior years." However, if the LOA indicated a specific taxable year and also "unverified prior years," only the assessment for the specific taxable year indicated in the LOA is valid.

In this case, the BIR issued a LOA against the taxpayer for the calendar year 2009 and unverified prior years. The CTA rendered the assessment for the taxable years 1998, 2000, 2001, 2006 and 2007 void because these were not specified in the LOA. Only the assessment for taxable year 2009 was valid.

The CTA also reiterated the rule on the taxpayer's right to due process. The taxpayer has fifteen (15) days from the receipt of the PAN to reply. The failure to allow the taxpayer to reply to the PAN within fifteen (15) days from receipt will render the assessment void.

In this case, the taxpayer received the PAN on June 1, 2011. He has until June 16, 2011 to reply to the PAN. However, the BIR sent the FAN on June 16, 2011, which was within the fifteen-day period. Hence, the CTA declared the assessment void.

Drugmaker's Biotech Research Laboratories, Inc. v. CIR, CTA Case No. 9635, October 15, 2021

On January 24, 2012, the CIR issued the Letter Notice (LN) informing the taxpayer that a computerized matching conducted by the BIR on information/ data provided by third party sources against its declarations per VAT returns disclosed discrepancies for the CY 2008.

The CTA ruled that the subject tax assessments and the Warrant of Distraint and Levy are void, since the RO who conducted the investigation of petitioner was not duly authorized to do so. Based on Section 6(A) of the National Internal Revenue Code, an authority emanating from respondent or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

Relative thereto, Sections 10 and 13 of the NIRC of 1997 provide that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a Letter of Authority (LOA). Thus, a grant of authority through a LOA issued by the Revenue Regional

Director must be made assigning an RO to perform tax assessment functions in order that the latter may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In this case, the BIR formally offered in evidence the LN to prove, among others, that the taxpayer was accorded due process and given the opportunity to explain the discrepancy noted.

Due process demands, as recognized under RMO No. 32-2005, that after an LN has served its purpose, the revenue officer should have properly secured a LOA before proceeding with the further examination and assessment of the taxpayer.

BIR represented by Comm. Caesar R. Dulay v. Hon. Menardo Guevarra in his capacity as Secretary of Justice and Ferdinand Santos in his capacity as President of Camp John Hay Hotel Corp., CTA Case No. 10298, October 15, 2021

The CTA has jurisdiction to decide cases involving a Petition for Certiorari from resolutions of the Department of Justice (DOJ) if the matter involves tax or customs cases. However, a Petition for Certiorari is not available if the petitioner may appeal the case or has other remedies available. Moreover, when the petitioner fails to appeal within the fifteen (15)-day period, the petitioner cannot resort to a Petition for Certiorari. In administrative cases, the petitioner may appeal a case from the DOJ to the Office of the President.

In this case, the BIR received the DOJ's resolution on July 12, 2017. Hence, it had until July 27, 2017 to file an appeal. However, it opted to file a motion for reconsideration on July 27, which was the last day. Upon the receipt of the Resolution denying the motion on February 21, 2020, the BIR had one (1) day, or until February 24, 2020 (since February 22 was a Saturday), to file an appeal. However, since the BIR did not file an appeal, the remedies of appeal and Petition for Certiorari are now lost.

The Investigating Prosecutor ruled that on the day specified in the Subpoena Duces Tecum (SDT), the taxpayer sent a representative to submit documents and confer with BIR officials. A subsequent audit of the taxpayer's records was conducted on four (4) occasions in the taxpayer's office. After the last audit, there was no evidence that the taxpayer was still required to present additional documents. Hence, there was no evidence that the taxpayer "neglected to appear or produce books". The CTA sustained the findings of the Investigating Prosecutor and the DOJ and added that the BIR should have first informed the taxpayer of any lacking documents, and it is only after the taxpayer's failure to comply that the filing of a criminal complaint for violation of an SDT should follow.

The CTA also emphasized that the BIR is not precluded from issuing an assessment even if the taxpayer fails to provide records since the rule is that in the absence of the accounting records of the taxpayer, his tax liability may be determined by estimation.

The BIR cannot require full compliance with the SDT because the BIR must make room for the possibility that the documents being required are not available or not existing at all. Otherwise, the taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit. Lastly, the CTA noted that the BIR failed to specify which of the subpoenaed documents have still not been submitted by the taxpayer.

MTI Advanced Test Development Corporation v. CIR, CTA Case No. 10112, October 13, 2021

After the lapse of the 120-day period and the BIR has not acted on the refund claim, the taxpayer must already file a judicial claim within thirty (30) days; otherwise, an appeal is not cognizable by the CTA. The taxpayer need not wait for the BIR to come up with a decision after the 120-day period.

The City Government of Makati and the City Treasurer of Makati City v. Eastbay Resorts, Inc., CTA AC No. 218, October 13, 2021

An administrative office is not considered a branch or sales office, which is subject to local business tax under the Local Government Code (LGC). The LGC provides that offices used only as display areas where no stocks or items are stored for sale, although orders may be received thereat, are not considered branch or sales offices. In this case, the taxpayer's administrative office does not sell goods or services. Hence, it was not subject to local business tax.

Furthermore, the CTA also highlighted the situs of the taxpayer for business tax is the taxpayer's business address as indicated in the pertinent documents submitted to the Securities and Exchange Commission or the Department of Trade and Industry or other appropriate agencies, as the case may be. The business address can be found in the Articles of Incorporation of a corporation.

Mitsuba Philippines Technical Center Corporation v. CIR, CTA Case No. 10025, October 6, 2021

Mitsuba seeks the issuance of a tax credit certificate for its alleged excess and unutilized input value-added tax (VAT). However, the CIR maintains that Mitsuba's Petition was filed out of time, that is, beyond the 30-day period allowed by law within which to perfect an appeal due to his inaction.

In the case of *Zuellig-Pharma Asia Pacific Ltd. Phils. ROQH v. CIR* (Zuellig-Pharma), the Supreme Court categorically declared that upon the effectivity of RMC No. 54-2014 or on 11 June 2014, the reckoning point should be date of submission of complete supporting documents which should coincide with the date of filing of the administrative claim.

Here, since the subject administrative claim for refund was filed after 11 June 2014 (*i.e.*, the date that RMC No. 54-2014 was issued), the 90-day period shall be reckoned from 27 September 2018 (*i.e.*, the date of filing of the subject administrative claim) on which date Mitsuba was already obligated to submit complete supporting documents. A perusal of the records, however, shows that Mitsuba only submitted the complete supporting documents on 22 October 2018.

Taking into account the rules laid down by the Supreme Court in *Total Gas* and *Zuellig-Pharma*, the CTA held that the 90-day (previously 120-day) period within which the CIR should act on the administrative claim should be reckoned from 27 September 2018, the date of filing of its administrative claim. It is on such date that Mitsuba could be deemed to have already submitted complete supporting documents together with its application for refund, and thus, barred from submitting additional documents thereafter.

Accordingly, the CIR had 90 days from 27 September 2018, or until 26 December 2018 to decide on the claim. However, the said 90-day period lapsed without any action from CIR. Given the prevailing rule that inaction on the part of the CIR is deemed a denial, Mitsuba's claim is considered "deemed denied" as early as 26 December 2018 or the expiration of the 90-day (previously 120-day) waiting

period. Thus, Mitsuba had 30 days or until 25 January 2019, to appeal such inaction to the Court. Consequently, Mitsuba's judicial claim for refund or tax credit filed before the CTA on 19 February 2019 was filed out of time.

Altimax Broadcasting Co., Inc. v. CIR, CTA Case No. 10044, October 6, 2021

The CIR contends that the Final Assessment Notices were served to Altimax through registered mail at its registered address.

The CTA ruled that one of the modes of service of the PAN, FLD, and FAN is by service through registered mail. As for such mode of service, the same must be made by sending the said notices "to the registered or known address of the [concerned] party" and "with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered." Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. Furthermore, it is required that the "[t]he server shall accomplish the bottom portion of the notice" and "*shall also make a written report under oath before a Notary Public or any person authorized to administer oath[s] under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person ... who received the same and such other relevant information.*"

The Supreme Court, in *CIR v. T Shuttle Services, Inc.*, provides that "CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and FAN." It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives.

The mere presentation of registry receipts is not sufficient. It is still required that the said registry receipts be signed by the concerned taxpayer's duly authorized representative, and that the signatures are identified and authenticated.

Philippine Mining Service Corporation v. CIR, CTA Case No. 9763, October 6, 2021

The CTA reiterated that in *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)* ("*Seagate case*"), the Supreme Court has settled that the scope of BIR regulations additionally requiring an approved prior application for effective zero-rating are not within the statutory authority granted by the legislature.

A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero-rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused from its VAT registration papers and photocopied documents attached thereto. Hence, its transactions cannot be exempted by its mere failure to apply for their effective zero-rating. Otherwise, their VAT exemption would be determined, not by their nature, but by the taxpayer's negligence -- a result not at all contemplated. Administrative convenience cannot thwart legislative mandate.

Based on the foregoing jurisprudential pronouncements, it is clear that no prior approved application is required for a transaction to be treated as subject to the 0% VAT rate.