

This MAP Tax Bulletin for January 2022 was contributed by Isla Lipana & Co./PwC Philippines.

SUPREME COURT DECISION

The substitution or replacement of revenue officers originally named in a Letter of Authority (LOA) must be accomplished through a separate or amended LOA
(G.R. No. 242670, promulgated 10 May 2021)

During a tax investigation, one of the original revenue officers named in the Letter of Authority (LOA) was transferred and a new revenue officer was designated to continue the tax investigation. For this purpose, a referral memorandum was issued by the Bureau of Internal Revenue. Neither a new LOA nor an amendment or modification to the original LOA was issued.

According to the Supreme Court, the practice of reassigning or transferring revenue officers originally named in a LOA and substituting or replacing them with new revenue officers to continue a tax investigation without a separate or amended LOA:

1. Violates the taxpayer's right to due process in a tax investigation because the issuance of an LOA prior to examination and assessment is a requirement of due process;
2. Usurps the statutory power of the Commissioner of Internal Revenue or his duly authorized representative to grant the power to examiner the books of account of a taxpayer because a memorandum of assignment, referral memorandum or such other equivalent document is not issued for the purpose of vesting upon the substitute or replacement revenue officer the authority to examine books of accounts; and
3. Does not comply with Revenue Memorandum Order No. 43-1990 which requires the issuance of a new LOA if revenue officers are reassigned or transferred.

COURT OF TAX APPEALS DECISION

Filing of judicial claim for refund one day after filing of administrative claim

(CTA Case No. 10008, promulgated 7 December 2021)

Under Section 229 of the Tax Code, a taxpayer-claimant must first file an administrative claim for refund with the Bureau of Internal Revenue before filing a judicial claim for refund with the Court of Tax Appeals (CTA). However, both administrative and judicial claims should be filed within the two-year prescriptive period.

Although the CTA held that the taxpayer-claimant may file the judicial claim without waiting for the resolution of its administrative claim, the filing of the judicial claim on 16 January 2019, one day after the filing of the administrative claim on 15 January 2019, deprived the BIR the full opportunity to decide the administrative claim. With just one day, the Commissioner of Internal Revenue was neither afforded a complete chance to pass upon the matter nor given an opportunity to act and correct the errors committed in the administrative forum. Under such circumstances, the CTA held that the taxpayer-claimant's judicial claim should be barred for failure to exhaust administrative remedies.

BIR ISSUANCES

Amendments to the VAT Regulations

(Revenue Regulations No. 21-2021, published on 10 December 2021)

In light of the new Title on Tax Incentives in the Tax Code and its implementing rules and regulations, the Bureau of Internal Revenue amended Revenue Regulations No. 16-2005 (Consolidated VAT Regulations) as follows:

1. Section 4.106-5(c) is amended to read:

“Sales to persons or entities whose exemption from **direct and indirect taxes** under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate;”

2. Export sales under Section 4.106-5 now includes the:

“Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods, to a registered export enterprise, to be used directly and exclusively in its registered project or activity x x x for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; x x x Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.”

3. Section 4.108-5(b)(2) is amended to read as follows:

“Services rendered to persons or entities whose exemption from **direct and indirect taxes** under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;”

4. Transactions subject to the VAT zero rate under Section 4.108-5(b) now includes the:

“Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise, to be used directly and exclusively in its registered project or activity x x x for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; x x x Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.”

The above amendments take effect immediately after publication and shall cover transactions entered into during the third quarter of taxable year 2021 and onwards.

BIR regulations implementing Republic Act No. 11590

(Revenue Regulations No. 20-2021, published on 3 December 2021)

The Bureau of Internal Revenue (BIR) issued regulations to implement the provisions of Republic Act No. 11590 entitled An Act Taxing Philippine Offshore Gaming Operations. The implementing regulations provide for the following:

- Definition of terms including the following:
 - ✓ Accredited Service Provider (which also included natural persons)
 - ✓ Agreed Pre-determined Minimum Monthly Revenue from Gaming Operations
 - ✓ Gross Gaming Revenue or Receipts
 - ✓ Payouts
 - ✓ Third-Party Auditor
- Non-gaming revenues of all Offshore Gaming Licensees (OGLs) shall be subject to VAT or percentage tax, whichever is applicable.
- Sale of goods, property, and services by VAT-registered service providers, including Accredited Service Providers, to OGLs shall be subject to the VAT zero rate if the OGLs are paying the 5% gaming tax.
- VAT zero-rating shall not apply if the services or goods supplies are used in non-gaming operations.
- All Philippine Offshore Gaming Operation (POGO) entities are required to submit an updated Summary List and Status Update on Foreign Nationals Employed Form not later than the 20th day after the end of each month.

- Each POGO Licensing Authority is required to submit a Status Report on OGLs Form and a List of Foreign Nationals with Issued Gaming Employment License Forms not later than the 20th day after the end of each month.
- Non-registration, non-payment, underpayment or non-withholding and remittance by OGLs, OGL-Gaming Agents, Accredited Service Providers and any of their branches are considered fraudulent acts, subject to penalties under the Tax Code.
- The BIR shall implement closure orders against OGLs, OGL-Gaming Agents, Accredited Service Providers and any of their branches that fail to pay taxes and/or that commit fraudulent acts. The closure of OGLs or OGL-Gaming Agents shall necessarily include the closure of their Accredited Service Providers.
- If the final withholding tax is not withheld and remitted by a POGO entity, the foreign national concerned may be deported, barred from re-entry, or blacklisted by the Department of Labor and Employment, Bureau of Immigration, and other relevant agencies.
- POGO entities that fail to provide their true and correct address shall be deemed as not having failed to register with the BIR.

Work-Around Procedure for Filing of Returns and Offshore Gaming Tax Payments
(Revenue Memorandum Circular No. 128-2021, issued on 28 December 2021)

While the proper BIR tax form or return for the payment of gaming tax returns is not yet available, Offshore Gaming Licensees (OGLs) shall use BIR Form No. 2553 which is available in the Electronic Filing and Payment System (eFPS) and in the Electronic Bureau of Internal Revenue Forms (eBIRForms) facility.

Here are the procedures to be observed by OGLs:

A. Filing of tax returns

1. Accomplish BIR Form No. 2553;
2. Choose **ATC OT 12** as the Alphanumeric Tax Code and put five percent (5%) in the tax rate column; and
3. File via eFPS or eBIRForms, or accomplish the downloadable form and file with the concerned Authorized Agent Bank (AAB) or file in the usual manner in remitting internal revenue taxes due.

B. Taxes shall be paid through:

1. AABs under the jurisdiction of the concerned Revenue District Office where the taxpayer is registered; or
2. eFPS or the following online facilities:
 - i. Landbank of the Philippines (LBP) Link.Biz.Portal – for taxpayers with ATM accounts with the LBP, holders of Bancnet ATM/Debit/Prepaid Card and taxpayers utilizing PesoNet facility
 - ii. Development Bank of the Philippines (DBP) Pay Tax Online – for holders of Visa/Mastercard, credit card and/or Bancnet ATM/Debit Card
 - iii. Union Bank Online Web and Mobile Payment Facility – for taxpayers with accounts with Union Bank

C. Updating of Registration Information

All OGLs, including Interactive Gaming Licensees, shall register and/or update their registration information such as:

1. Local address of the OGL and/or address of Local Gaming Agent;
2. Philippine Standard Industrial Classification (PSIC) Code; and
3. Registration of required form types in the filing of Gaming Tax, Income Tax, and other applicable form types.

Payment of Taxes Related to One-Time Transactions

(Revenue Memorandum Circular No. 125-2021, issued on 16 December 2021)

Taxes on electronically files One-Time Transactions (ONETT) may now be paid through any of the following online payment facilities:

1. Landbank of the Philippines (LBP) Link.Biz.Portal – for taxpayers with ATM accounts with the LBP, holders of Bancnet ATM/Debit/Prepaid Card and taxpayers utilizing PesoNet facility;
2. Development Bank of the Philippines (DBP) Pay Tax Online – for holders of Visa/Mastercard, credit card and/or Bancnet ATM/Debit Card; and
3. Union Bank Online Web and Mobile Payment Facility – for taxpayers with accounts with Union Bank.

Disseminating the updates to list of VAT-exempt products

(Revenue Memorandum Circular No. 124-2021, issued on 14 December 2021)

The Bureau of Internal Revenue published Letter dated 8 November 2021 from the Food and Drug Administration (FDA) containing updates to the “List of VAT-Exempt Products Under R.A. No. 11534.” The letter was attached to Revenue Memorandum Circular (RMC) No. 124-2021, which may be viewed at or downloaded from www.bir.gov.ph.

RMC No. 124-2021 updates and supplements RMC No. 81-2021 which published the consolidated list of VAT-exempt products and is the controlling list insofar as the VAT-exempt items under Sections 109(1)(AA) and 109(1)(BB) of the Tax Code are concerned.

Disseminating the updated list of VAT-exempt drugs and vaccines

(Revenue Memorandum Circular No. 123-2021, issued on 14 December 2021)

The Bureau of Internal Revenue published Letter dated 17 November 2021 from the Department of Health (DOH) containing a copy of the updated “List of VAT-Exempt Drugs and Vaccines Prescribed and Directly Used for COVID-19 Treatment.” The letter was attached to Revenue Memorandum Circular (RMC) No. 123-2021, which may be viewed at or downloaded from www.bir.gov.ph.

Clarifying the tax treatment of integrating the international passenger service charge at the point of sale of airline tickets

(Revenue Memorandum Circular No. 122-2021, issued on 14 December 2021)

The Bureau of Internal Revenue has issued guidelines to standardize the tax treatment of integrating the Domestic Passenger Service Charge (DPSC) and International Passenger Service Charge (IPSC), commonly referred to as terminal fees, into airline tickets at the point of sale.

A. Collection of IPSC

Domestic Airline Companies shall collect IPSC from passengers and shall include the IPSC in the official receipt to be issued to the latter. The taxable and VAT-exempt components of the IPSC shall be separately reflected in the official receipt. The share of the Airport Authority in the IPSC should be shown in the Airline Company official receipts as part of receipts subject to VAT while the Aviation Security Fee and other fees should be reflected as VAT-exempt. The VAT component of the IPSC should be included in the total VAT.

For International Airline Companies, the collected IPSC shall also be reflected in their official receipts. The share of the Airport Authority, Aviation Security Fee and other fees should be reflected as VAT-exempt.

The accounts to record the IPSC (share of the Airport Authority, Aviation Security Fee and other fees) may be shown in the financial statements as other income/expense.

B. Remittance of IPSC by Airline Company to Airport Authority

The IPSC collected by the Airline Company shall be paid to the Airport Authority which shall issue an official receipt indicating the full amount of the IPSC (*i.e.*, P550 per passenger).

C. Payment of Service Fees by Airport Authority to Airline Company

The service fees paid by the Airport Authority to the Airline Company shall be governed by the rules on government money payments, hence, subject to the 5% creditable withholding VAT and 2% creditable withholding tax. The Airline Company shall issue VAT official receipts.

The service fees shall be treated as other income subject to corporate income tax.

Clarifying the taxability of interest paid by cooperatives to member's share capital *(Revenue Memorandum Circular No. 121-2021, issued on 14 December 2021)*

Under Section 11(a) of Revenue Memorandum Circular No. 12-2010, all cooperative

members shall be liable to pay all the necessary taxes except final tax on member's deposits or fixed deposits (otherwise known as share capital) with cooperatives.

The Bureau of Internal Revenue clarified that member's deposit refers to savings and time deposits of both regular and associate members, while share capital refers to member's paid-up capital. Based on Section 11(a) above, members of the cooperative are not liable to pay any tax and fee on interest earned on their deposits and fixed deposits (share capital). Hence, cooperatives are also not liable to withhold tax on said interest payments.

Amendments to the IRR of Title XIII – Tax Incentives of the Tax Code

(Revenue Memorandum Circular No. 120-2021, issued on 13 December 2021)

The following provisions of the Implementing Rules and Regulations of Title XIII – Tax Incentives of the Tax Code have been amended by the Secretary of Finance and the Secretary of Trade and Industry:

1. Rule 2, Section 4 (Customs Duty Exemption on Importation of Capital Equipment, Raw Materials, Spare Parts, or Accessories)
2. Rule 2 Section 5 (Value-added Tax zero-rating and exemption)
3. Rule 2, Section 8 (Taxation after the expiration of the period of availment of incentives)
4. Rule 3, Section 3 (Qualified expansion, entirely new project, or existing registered projects or activities)
5. Rule 17, Section 2 (Entitlement to duty exemption on importation of capital equipment, raw materials, spare parts, or accessories)
6. Rule 18, Section 5 (Non-income related tax incentives)
7. Rule 18, Section 6 (Transitory rules for offshore gaming licensees and accredited service providers)

The amendments are attached to Revenue Memorandum Circular No. 120-2021 which may be viewed at www.bir.gov.ph.

Availability of revised BIR Form Nos. 1707 and 1707-A

(Revenue Memorandum Circular No. 119-2021, issued on 13 December 2021)

The following BIR Forms have been revised due to the implementation of the CREATE Act:

Form No.	Description
1707	Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)
1707-A	Annual Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)

The revised manual returns are already available in www.bir.gov.ph. However, they are not yet available in the Electronic Bureau of Internal Revenue Forms (eBIRForms).