



MAP Tax Bulletin

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This MAP Tax Bulletin for May 2022 was contributed by Salvador Llanillo & Bernardo, Attorneys-at-Law.

Revenue Regulations

Rev. Regs. No. 2-2022 dated April 4, 2022
Prescribing the Additional Guidelines for Implementing the Tax Provisions of the PERA Act of 2008 Effectively Amending Pertinent Provisions of Revenue Regulations (RR) No. 17-2011 and Revising the Provisions of Revenue Regulations No. 6-2021.

This Regulation was issued to prescribe additional guidelines for implementing the tax provisions of the Personal Equity and Retirement Account (PERA) Act of 2008. This effectively amends certain provisions of Rev. Regs. Nos. 17-2011 and 6-2021.

PERA Administrators are mandated to comply with the following reportorial requirements through the PERASys:

	Name of Report	Due Date of Submission	Format
1	Quarterly Report on PERA Contributions	Not later than the fifteenth (15 th) day following the close of every quarter	Annex "A"
2	Quarterly Report on PERA Distributions/ Early Withdrawals/ Termination	Within sixty (60) days following the end of the quarter of the date of termination or withdrawal	Annex "B"
3	Annual Report on PERA Contributions	Within sixty (60) days from the close of the calendar year	Annex "C"
4	Annual Report on PERA Distributions/ Early Withdrawals/ Terminations	Within sixty (60) days from the close of the calendar year	Annex "D"

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The PERA-Tax Credit Certificate (PERA-TCC) refers to the document evidencing the amount of tax credit equivalent to five percent (5%) of the total amount of qualified PERA contributions made in a year. The application PERA-TCC shall be filed online thru the PERASys by the PERA Administrator within sixty days (60) days from the close of the calendar year. Once approved, the PERA-TCC can be generated through the ePERA System. This generated PERA-TCC shall be readily accessible at the PERASys by the PERA administrator.

The PERA-TCC shall be used only for the payment of income tax liabilities of qualified employees and self-employed contributors, while for qualified overseas Filipino contributors, the PERA-TCC can be used in the payment of any internal revenue taxes.

PERA Administrators shall remit through the online filing and payment facilities the penalties of five percent (5%) and twenty percent (20%) for early withdrawal of qualified contribution prescribed under 10-2016.

Rev. Regs. No. 3-2022, dated April 8, 2022

Implementing the provisions of RA No. 11635, titled "An Act Amending Section 27 (B) of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes" on the income taxation of proprietary educational institutions and hospitals which are non-profit

Under this Regulation, the following institutions shall be covered by the preferential ten percent (10%) corporate income tax rate:

1. Proprietary Educational Institutions;
2. Hospitals which are non-profit; and

3. Non-Stock, Non-Profit Educational Institutions whose net income or assets accrue/inure to or benefit any member or specific person.

However, for the period beginning July 1, 2020 until June 30, 2023, the rate of one percent (1%) shall apply to the institutions and hospitals enumerated above.

Further, the Regulation clarifies that the twenty-five percent (25%) regular corporate income tax rate prescribed under Section 27 (A) of the NIRC, as amended, shall be imposed on the entire taxable income of the above-enumerated institutions, if their gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income they derived from all sources. The term "*unrelated trade, business or other activity*" means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institutions or hospitals of their primary purpose or function.

Moreover, a Non-Stock, Non-Profit Educational Institution which does not fall under any of the institutions listed above shall be subject to the rate of twenty-five (25%) regular corporate income tax on the portion of its revenues or assets not used actually, directly, and exclusively for educational purposes.

Revenue Memorandum Circulars

Revenue Memorandum Circular No. 36-2022 dated April 6, 2022**Prescribing the Uniform Template for VAT Zero Percent (0%) Certification to be Issued by Investment Promotion Agencies (IPAs) in Relation to Q & A No. 34 of Revenue Memorandum Circular (RMC) No. 24-2022**

This Circular is issued to prescribe the format of VAT Zero Percent (0%) Certification issued by Investment Promotion Agencies (IPAs) to the duly registered export enterprises (REEs)

IPAs shall issue annually a VAT zero percent (0%) certification to REEs which shall indicate the following:

- (i) Registered export activity (*i.e.*, manufacturing, IT BPO, *etc.*):
- (ii) Tax incentives entitlement under agreed terms and conditions with validity period; and
- (iii) The applicable goods and services (or category thereof), *i.e.*, raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out.

All IPAs shall be required to provide the BIR a master list of all REEs which have been issued a VAT Zero Percent (0%) Certification which should be submitted to the Assistant Commissioner, Assessment Service, Attention: The Chief, Audit Information, Tax Exemption and Incentives Division and email the same to: aiteid_ies@bir.gov.ph.

Revenue Memorandum Circular No. 37-2022 dated April 6, 2022**Clarificatory Guidelines on the Submission of Certificate of Entitlement to Tax Incentives**

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Pursuant to Revenue Memorandum Circular (RMC) No. 28-2022

This Circular is issued to clarify the coverage of the provisions stated in RMC No. 28-2022.

Prior to the filing of the Annual Income Tax Return (AITR), the following shall apply for a Certificate of Entitlement to Tax Incentives (CETI) with their respective Investment Promotion Agency (IPA) through the Fiscal Incentives Registration and Monitoring System (FIRMS):

1. All registered business enterprises (RBEs) enjoying tax incentives under the transitory provisions in Section 311 of the CREATE Act; and
2. All registered business enterprises under CREATE Act.

RBEs already issued with a certificate of entitlement to tax incentives in a template/format previously prescribed by the IPA as proof of the RBE's entitlement to fiscal incentives, shall be allowed to attach the same in their AITR for taxable year 2021, in lieu of the Fiscal Incentives Review Board-prescribed CETI.

Revenue Memorandum Circular No. 38-2022 dated April 6, 2022**Clarification on the Transitory Provision for the Non-Income Related Tax Incentives Granted to Registered Export Enterprises under Investment Promotion Agencies (IPAs)**

This Circular is issued to clarify the transitory provisions for the non-income related tax incentives pursuant to Section 5, Rule 18 of the amended Implementing Rules and Regulations in relation to Section 311 of the CREATE Act.

All existing registered export enterprises (REEs) prior to CREATE that will continue to avail of their existing income tax incentives, may continue to enjoy the VAT zero-rating on local purchases that are directly attributable and exclusively used in the registered project or activity until the

expiration of the transitory period, as follows:

1. For REEs which are granted only an Income Tax Holiday (TH) – until the remaining period of the ITH.
2. For REEs which are granted an ITH and/or five percent (5%) tax on gross income earned – until the expiration of the ten (10) year limit.

If the income tax incentive of an REE has already expired prior to CREATE, then the VAT zero-rating on local purchases can no longer be availed.

Revenue Memorandum Circular No. 39-2022 dated April 6, 2022

Manner of Payment of Penalty Relative to Violations Incurred by Registered Business Enterprises (RBEs) under the Information Technology-Business Process Management (IT-BPM) Sector on the Conditions Prescribed Regarding Work From Home (WFH) Arrangement

This Circular is issued to mandate the uniform manner of payment of the penalty imposed on RBEs under the IT-BPM sector which were granted ‘Work from Home’ privileges but failed to comply with conditions under Fiscal Incentives Regulatory Board (FIRB) Resolution No. 19-2021.

Payment shall be made by using BIR Form No. 0605, by choosing the radio button pertaining to ‘Others’, under ‘Voluntary Payment’ and by indicating in the field provided the phrase “Penalty pursuant to FIRB Res. No. 19-2021”. The tax type code shall still be “IT” and the ATC to be indicated is “MC 200”. The penalty shall be paid within thirty (30) days after the due date prescribed for the payment of income tax. Administrative penalties shall be imposed should the same be paid beyond the said period.

Revenue Memorandum Circular No. 40-2022 dated April 6, 2022

Clarifications and Guidelines on the Use of Electronic Audited Financial Statement (eAFS) System

This Circular is being issued to clarify the use of eAFS System.

The submission of eFiled Annual Income Tax Returns (AITR) and its attachments to eAFS is applicable to any taxable year and all succeeding fiscal and/or taxable years. The existing procedures on the submission of filed AITR and its attachments to eAFS system shall be observed. Likewise, the use of Electronic Signature applies to all tax returns, attachments and documents required to submit AITR and returns.

Revenue Memorandum Circular No. 42-2022 dated April 12, 2022

Clarifying the Deadline for Filing of Annual Income Tax Returns (AITR) for Taxable Year Ending December 31, 2021; providing Guidelines in the Manner of Filing and payment thereof; and Non-imposition of Surcharge on Amended Returns

This Circular is issued to reiterate the deadline for the filing of Annual Income Tax Return (AITR) for Calendar Year 2021 as well as the payment of the corresponding taxes due thereon is on April 18, 2022. In addition, a tentative AITR may be filed on or before April 18, 2022 which may be amended on or before May 16, 2022, without imposition of interest, surcharge and penalties.

Taxpayers whose amended returns will result in overpayment of taxes paid can opt to carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding period or file for refund.

Filing the Calendar Year 2021 AITR

Taxpayers who are mandated to use eBIRForms/eFPS under existing issuances must file the tax returns thru eBIR Forms System. The same rule applies to taxpayers who voluntarily opt to use the eBIRForms.

Meanwhile, Taxpayers who are required to use the eFPS Facility shall file the return electronically. However, in case that the newly created tax returns are not yet available in the eFPS Facility but already available in the eBIRForms System, the taxpayer shall file the said return using the eBIRForms System. The same rule applies to taxpayers who voluntarily opt to enroll in the eFPS Facility.

Payment for Calendar Year 2021 AITR

The corresponding taxes due thereon shall be paid through any of the following payment facilities:

1. Manually thru Authorized Agent Banks (AABs) and Revenue Collection Officers (RCOs) notwithstanding the Revenue District Office (RDO) jurisdiction.
2. Electronic payment (ePAY) facilities:
 - a. Land Bank of the Philippines' (LBP) Link.Biz Portal – for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit/Prepaid Card or taxpayer utilizing PCHC PayGate or PesoNet facility (depositors of RCBC, Robinsons Bank, Union Bank, BPI and PSBank);
 - b. Development Bank of the Philippines' (DBP) Pay Tax Online – for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card: or
 - c. Union Bank of the Philippines' (UBP) Online/The Portal – for taxpayers who has an account with UBP or InstaPay using UPAY Facility for individual non-account holder of Union Bank;
 - d. Electronic payment may also be made through Taxpayer Service Provider (TSP) such as Gcash, PayMaya, and MyEG.
3. For taxpayers mandated to use eFPS, the filing of BIR Form No. 1702RT with or without payment shall be made through eFPS. Likewise, the filing of BIR Form Nos. 1702EX and 1702MX with or without payment shall be made through

eBIRForms System and payment shall be through eFPS using BIR Form No. 0605. Tax type code to be used is income tax (IT) and the Alphanumeric Tax Code (ATC) is MC 200.

For non-eFPS taxpayers

For non-eFPS taxpayers, “No payment” CY 2021 AITR shall be filed electronically through the eBIRForms Facility. However, the following taxpayers may manually file using the electronic or computer-generated returns or photocopied returns in its original format and in Legal/Folio-sized bond paper:

1. Senior Citizen (SC) or Persons with Disabilities (PWDs) filing for their own returns;
2. Employees deriving purely compensation income from two or more employers, concurrently or successively at any time during the taxable year, or from a single employer, although income of which has been correctly subjected to withholding tax, but whose spouse is not entitled to substituted filing; and
3. Employees qualified for substituted filing under RR No. 2-98 but opted to file for an ITR and are filing for purposes of promotion, loans, scholarships, foreign travel requirements, etc.

Use of an electronic signature

For purposes of filing all tax returns, attachments, and documents, an electronic signature shall be deemed the equivalent to an actual signature or “wet signature”.

Revenue Memorandum Circular No. 43-2022 dated April 12, 2022

Non-imposition of Surcharge on Amended Tax Returns

This Circular is issued to reconcile RMC Nos. 54-2018 and 46-99.

Under RMC No. 54-2018, when an additional tax is due per amended tax return, the 25% surcharge is imposed on the additional tax to be paid. Meanwhile, under RMC No. 46-99, no 25% surcharge is imposed in computing for the deficiency tax assessment as a result of a tax audit.

The Circular recognizes the effect of unintentionally rewarding taxpayers who opt to wait for the tax audit instead of filing an amended return when there is additional tax to be paid.

Hence, to reconcile the situation described above, the Circular provides for the following guidelines in imposing the 25% surcharge in relation to the RMC Nos. 54-2018 and 46-99, to wit:

1. The 25% surcharge shall not be imposed to an amendment of a tax return if the taxpayer was able to file the initial tax return on or before the prescribed due date for its filing.
2. The 25% surcharge shall be imposed on a tax deficiency found during audit if the particular tax return being audited was found to have been filed beyond the prescribed period or due date.

Revenue Memorandum Circular No. 44-2022 dated April 12, 2022

Guidelines in the Filing of Annual Income Tax Returns and Payment of Tax Due Thereon for Taxable Year 2021

This Circular is issued to prescribe the guidelines in the filing of Annual Income Tax Returns and payment of the corresponding taxes due thereon for taxable year 2021.

<u>TAXPAYER/FILER</u>	<u>BIR FORM NO.</u>	<u>FILING INSTRUCTIONS</u>	<u>PAYMENT INSTRUCTIONS</u>
Individuals earning purely compensation whose income tax has been correctly withheld (tax due equals tax withheld)	1700 January 2018 (ENCS)	If the employee is qualified for substituted filing, no need to file a return	
Individuals earning purely compensation with two or more employers	1700 January 2018 (ENCS)	➤ Manual Filers – use the pre-printed return available in the Revenue District Office (RDO) or the downloadable return found in the BIR website (www.bir.gov.ph) or the return in the Offline eBIRForms Package v7.9.2.1. The package can be downloaded in the BIR website.	<u>For Manual and eBIRForms Filers</u>
Non-Resident Alien not engaged in business or trade in the Philippines but receiving income from sources within the Philippines	1700 January 2018 (ENCS)	<p>a) With tax due/payment –</p> <ul style="list-style-type: none"> ▪ <u>Pre-printed Return Available in the RDO</u> <p>Fill out all applicable fields</p>	<p>a) Manual Payment</p> <ul style="list-style-type: none"> ▪ Authorized Agent Bank (AAB) where the taxpayer is registered; or ▪ In places where there are no AABs, the tax due shall be paid with the

<u>TAXPAYER/FILER</u>	<u>BIR FORM NO.</u>	<u>FILING INSTRUCTIONS</u>	<u>PAYMENT INSTRUCTIONS</u>
Individuals with business/practice of profession income ONLY and the method of deduction used is itemized deduction	1701 January 2018 (ENCS)	<p>Fill out all applicable fields then file the return with the Authorized Agent Bank (AAB) under the jurisdiction of the RDO or to the Revenue Collection Officer (RCO) of the RDO where the taxpayer is registered.</p> <ul style="list-style-type: none"> ▪ <u>Return downloaded from the BIR website</u> Print the return and fill out all the applicable fields then file the return with the AAB under the jurisdiction of the RDO or to the RCO of the RDO where the taxpayers is registered. ▪ <u>Return in the Offline eBIRForms Package v7.9.2.1</u> Fill out the return then after successful validation print the return and file with the AAB under the jurisdiction of the RDO or to the RCO of the RDO where the taxpayer is registered. <p>b) Without tax due/payment – manual filing is not allowed, The “No Payment” return shall be filed thru the Offline eBIRForms Package v7.9.2.1 by submitting the return online.</p> <p>➤ eBIRForms Filers/Users – shall use the Offline eBIRForms Package v7.9.2.1 in filling out the return. The package can be downloaded in the BIR website, and if:</p> <p>a) With tax due/payment – after accomplishing the return, submit the return online. If:</p> <ul style="list-style-type: none"> ▪ Manual payment – print the return and the Tax Return Receipt Confirmation received via email. File the return, together with the Tax Return Receipt Confirmation with AAB under the jurisdiction of the RDO or to the RCO of the RDO where the taxpayer is registered. ▪ Online payment – pay thru BIR’s ePayment gateways/facilities <p>b) Without tax due/payment – file the “No Payment” return thru the Offline eBIRForms Package v7.9.2.1 by submitting the return online.</p> <p>➤ Electronic Filing and Payment System (eFPS) Filers/Users of the following:</p>	<p>concerned Revenue Collection Officer (RCO) under the RDO.</p> <p>a) Electronic Payment (ePay) Gateways **</p> <ul style="list-style-type: none"> ▪ Landbank of the Philippines (LBP) Link.BizPortal, for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card or for taxpayers utilizing PCHC PayGate or PesoNet (depositors of Rizal Commercial Banking Corporation (RCBC), Robinsons Bank, Union Bank, Bank of the Philippine Islands (BPI) and Philippine Savings Bank (PSBank); or ▪ Development Bank of the Philippines (DBP) Tax Online, for taxpayers-holders of VISA/Master Credit Card and/or Bancnet ATM/ Debit Card; or ▪ Union Bank Online/The Portal Payment Facilities who have account with Union Bank or UPAY via InstaPay (for individual Non-Union Bank Account holders); or
Individuals with business/practice of profession income and at the same time with compensation income (mixed income earner)	1701 January 2018 (ENCS)		
Estates engaged in trade or business	1701 January 2018 (ENCS)		
Trusts engaged in trade or business	1701 January 2018 (ENCS)		
Individuals with business/ practice of profession income ONLY and the method of deduction used is optional standard deduction (OSD)	1701A January 2018 (NEW)		
Individuals with business/ practice of profession income ONLY and opted to avail of 8% flat income tax rate	1701A January 2018 (NEW)		
Corporation, Partnership and other Non-Individual who are subject only to regular income tax rate of 25% or 20%	1702-RT January 2018 (ENCS)		
Corporation, Partnership and other Non-Individual who are exempt from income tax or subject to 0%	1702-EX January 2018 (ENCS) v.2 (1702EXv2018C in eBIRForms)		

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(e.g. PEZA registered business with ITH, BOI registered business with ITH, GPP, cooperatives, etc.)			<ul style="list-style-type: none"> ▪ Thru Taxpayer Software Provider (TSP)/Taxpayer Agent such as GCash, PayMaya or MyEG
Corporation, Partnership and other Non-Individual who are subject to Special Rate of 5% or 2%, etc. (with or without Regular IT Rate of 25%/20% and/or Exempt or 0%)	<p align="center">1702-MX January 2018 (ENCS)</p> <p align="center">(1702MXv2018C in eBIRForms)</p>	<p>a) BIR Form Nos. 1700, 1701 and 1701A – with or without tax due/payment</p> <ul style="list-style-type: none"> ▪ Shall still file thru the Offline eBIRForms Package v7.9.2.1 by following the procedure stated under the eBIRForms Filers/Users. ▪ After successful submission, pay manually thru AAB or RCO or pay electronically thru BIR’s ePayment gateways/facilities <p>b) BIR Form No. 1702-RT – with or without tax due/payment</p> <ul style="list-style-type: none"> ▪ Shall file thru eFPS upon posting of this RMC; ▪ eFPS filers/users who already filed their BIR Form No. 1702-RT using the Offline eBIRForms Package shall not be required to refile the said return in eFPS. <p>c) BIR Form Nos. 1702-EX and 1702-MX – with or without tax due/payment</p> <ul style="list-style-type: none"> ▪ Shall still file thru the Offline eBIRForms Package v7.9.2.1. ▪ After submitting the return, payment of taxes due thereon, if any, shall be done in the eFPS facility using BIR Form No. 0605. Tax Type Code to be used is Income Tax (IT) and the Alphanumeric Tax Code (ATC) is MC 200 Miscellaneous Tax. 	<p>** Taxpayers who shall pay their tax due online are required to file the corresponding Annual Income Tax Return (AITR) online through the Offline eBIRForms Package v7.9.2.1</p> <p>For eFPS Filers – ePay through the eFPS Facility</p>

SUBMISSION OF REQUIRED ATTACHMENTS:			
TAXPAYER/FILER	WHEN TO SUBMIT	MODE OF SUBMISSION	ATTACHMENTS
Manual Filers	Upon filing of the AITR to the AAB or RCO under the jurisdiction of the RDO where the taxpayer is registered	<ul style="list-style-type: none"> ➤ Manual Submission ➤ Online submission thru Electronic Audited Financial Statements (eAFS) 	<ul style="list-style-type: none"> • Certificate of Independent CPA duly accredited by the BIR • Audited Financial Statements (AFS) • Notes to AFS • Statement of Management Responsibilities (SMR) • BIR Form No. 1709 – Information Return on Transactions with Related Party, if applicable • BIR Form No. 2307- Certificate of Creditable Tax Withheld at Source • System generated Acknowledgement Receipt or Validation Report of electronically submitted Summary Alphabetical List of Withholding Taxes (SAWT) thru esubmission@bir.gov.ph
eBIRForms and eFPS Filers	Within fifteen (15) days from the date of electronic filing or the deadline of filing of the return whichever comes later.		

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Revenue Memorandum Circular No. 45-2022 dated April 12, 2022

Revised Requirements on the Manner of Remittance of Penalties of Five Percent (5%) and Twenty Percent (20%) for Early Withdrawal of Qualified Contribution under Personal Equity and Retirement Account (PERA) Act of 2008

The penalties of five percent (5%) and twenty percent (20%) for early withdrawal of qualified contributions shall be remitted by the PERA Administrator through the online filing and payment facilities of the BIR on or before the last day of the month following the close of the calendar quarter during which the deduction was made.

The PERA Administrator shall duly accomplish a payment form (Form No. 0605) providing all the prescribed information, more particularly under “line item no. 17” of the said form, by filling-up an “X” mark in the box provided for “Others”, as well as the phrase “PERA Early Withdrawal Penalty” in the separate box provided for “Specify”.

The documentary proofs of payment (i.e., duly filed BIR Form No. 0605, Filing Reference Number, Confirmation/Acknowledgment Receipt etc.) shall be submitted to the PERA Processing Office – Audit Information Tax Exemption and Incentives Division, thru its official email address at aiteid_mos@bir.gov.ph within five (5) days from the date of payment of the penalties.

Revenue Memorandum Circular No. 46-2022 dated April 13, 2022

Clarifications on the Deadline of Submission of Attachments to the 2021 Annual Income Tax Return and Other Matters

This Circular is issued in relation to the deadline for the submission of attachments to the 2021 Annual Income Tax Return (AITR).

The deadline for submission of attachments to the AITR is on or before May 31, 2022, whether the

electronically filed AITR is an original or an amended return. The submission shall be made manually to the Revenue District Office (RDO) or to the Large Taxpayers Division where the taxpayer is registered or electronically through the Electronic Audited Financial Statements (eAFS) System of the BIR.

The attachments as per RMC No. 44-2022 are as follows:

- Certificate of Independent CPA duly accredited by the BIR
- Audited Financial Statements (AFS)
- Notes to AFS
- Statement of Management Responsibilities (SMR)
- BIR Form No. 1709 – Information Return on Transactions with Related Party, if applicable
- BIR Form No. 2307- Certificate of Creditable Tax Withheld at Source
- System generated Acknowledgement Receipt or Validation Report of electronically submitted Summary Alphabetical List of Withholding Taxes (SAWT) thru esubmission@bir.gov.ph

Revenue Memorandum Circular No. 48-2022 dated April 20, 2022

Revised Provisions on the Submission of Financial Statements of Cooperatives Registered under the Cooperative Development Authority (CDA) as a Requirement for the Renewal of Certificate of Tax Exemption (CTE) of Cooperatives Pursuant to Revenue Memorandum Order No. 76-2010.

This Circular is issued to align the policy in the renewal of Certificate of Tax Exemption (CTE), particularly on the submission of Certified True Copy of the latest Financial Statements of the Cooperatives duly audited by a BIR-accredited independent Certified Public Accountant.

Cooperatives registered under the Cooperative Development Authority whose gross annual sales,

earnings, receipts do not exceed the above threshold of P3,000,000.00 shall not be required to submit a Financial Statement (FS) audited by an independent CPA when renewing its application for CTE.

Revenue Memorandum Circular No. 49-2022 dated April 20, 2022

Amending Pertinent Portions of the Questions and Answers (Q & A) in Revenue Memorandum Circular (RMC) No. 24-2022 to Align Them with the Provisions of CREATE Act and its Implementing Rules and Regulations (IRR)

The following amendments have been introduced to RMC No. 24-2022:

RMC No 24-2022	RMC No. 49-2022
<p>Q10: RR No. 21-2021 was issued few months after the issuance of RR No. 15-2021, which deferred the implementation of RR No. 9-2021. There is a possibility that affected taxpayers may have declared their sales to registered export enterprises as VAT zero-rated and domestic market enterprises (DMEs) within Ecozones and Freeport zones for the period July 1, 2021 up to the effectivity of RR No. 21-2021 on December 10, 2021. What happens if these are not qualified for VAT zero-rating based on the provisions of the CREATE Act?</p>	<p>Q10: RR No. 21-2021 was issued a few months after the issuance of RR No. 15-2021, which deferred the implementation of RR No. 9-2021. There is a possibility that the sales transactions covered in RR No. 9-2021 have been declared by the sellers as VAT zero-rated for the period July 1, 2021 up to December 9, 2021 or a day prior to the effectivity of RR No. 21-2021 on December 10, 2021. What happens if these are not qualified for VAT zero-rating based on the provisions of the CREATE Act?</p>
<p>A10: This is an instance where the non-retroactivity rule under Section 246 of the Tax Code, as amended, can be applied inasmuch as this will be prejudicial to the taxpayers affected. Hence, the said transactions that have been considered by the seller as VAT zero-rated shall still remain as VAT zero-rated for the period July 1, 2021 to December 9,2021.</p> <p>However, for those taxpayers that declared their transactions to qualified registered export enterprises and DMEs within the Ecozones and Freeport zones as subject to VAT, the options laid down in Q&A No. 7 and 8 may be followed.</p>	<p>A10: This is an instance where the non-retroactivity rule under Section 246 of the Tax Code, as amended, can be applied inasmuch as this will be prejudicial to the taxpayers affected. Hence, the said transactions that have been considered by the seller as VAT zero-rated shall still remain as VAT zero-rated for the period July 1, 2021 to December 9, 2021.</p> <p>However, for those affected taxpayers that have declared their transactions as subject to VAT, the options laid down in Q&A No. 8 and 9 may be followed.</p>
<p>Q17: What is the treatment on the sales by registered non-export enterprises or DMEs located in Ecozones and Freeport Zones to registered export enterprises and non- RBEs?</p>	<p>Q17: What is the treatment on the sales by registered non-export locators or domestic market enterprises (DMEs) located in Ecozones and Freeport Zones?</p>
<p>A17: The DME under the 5% Gross Income Tax (GIT) or Special Corporate Income Tax (SCIT) regime, registered as a VAT exempt entity, shall treat its revenues as VAT exempt. The VAT passed on to</p>	<p>A17: The following rules shall apply to the DME's sale of goods and services:</p> <p>a) The seller is registered prior to CREATE:</p>

<p>it by its VAT-registered local suppliers shall form part of its cost or expenses.</p>	<ul style="list-style-type: none"> ▪ If the non-export locator is under the 5% Gross Income Tax (GIT) regime, the locator is a VAT-exempt entity; hence, shall treat its sales, whether inside the Ecozones or Freeport Zones as well as from the customs territory, as VAT-exempt only to the extent of the registered activity. The VAT passed on by its VAT-registered local suppliers shall form part of its cost or expenses. ▪ If the non-export locator is under the income tax holiday (ITH), sales to registered export enterprises are subject to VAT at zero-rate, provided the goods and services are directly and exclusively used in the latter's registered project or activity. ▪ If the non-export locator is under the ITH, sales to non-export locators or DMEs within the Ecozones and Freeport Zones, as well as sales to enterprises from the customs territory, are subject to VAT. <p>b) The seller is registered during the effectivity of CREATE:</p> <ul style="list-style-type: none"> ▪ Sales to registered export enterprises are subject to VAT at zero-rate, provided the goods and services are directly and exclusively used in the latter's registered project or activity. ▪ Sales to DMEs within the Ecozones and Freeport Zones, as well as sales to enterprises from the customs territory, are subject to VAT.
<p>Q31: What is required from the existing registered export enterprises that have already completed their ITH and already under the 5% GIT or SCIT regime but remained as VAT-registered entity?</p>	<p>Q31: What is required from the existing registered export enterprises that have already completed their ITH and already under the 5% GIT or SCIT regime but remained as VAT-registered entity?</p>
<p>A31: The registered export enterprise is required within two (2) months from the expiration of its ITH to change its registration status from a VAT-registered entity to Non-VAT.</p> <p>Registered export enterprises enjoying GIT or SCIT regime but are still VAT-registered at the time the CREATE Act took effect are required within two (2) months from the effectivity of this Circular to change its registration status as provided in the preceding paragraph.</p>	<p>A31: Registered export enterprises whose sales are generated only from the registered activity and have shifted from ITH to 5% GIT or SCIT regime shall within two (2) months from the expiration of their ITH, change their registration status from a VAT-registered entity to non-VAT. Likewise, registered export enterprises enjoying 5% GIT regime but are still VAT-registered at the time the CREATE Act took effect shall within two (2) months from the</p>

	<p>effectivity of this Circular change their registration status to non-VAT.</p> <p>However, if the taxpayer has other activities other than those registered with the IPA that are subject to VAT (i.e., VAT at 12% and 0%), it shall remain as a VAT taxpayer and shall report the sales in the VAT returns as VATable, zero-rated and/or VAT-exempt, as the case may be.</p>
<p>Q33: Is prior approval from the BIR needed to be secured by the local suppliers of goods/services of registered export enterprises in order for their sales to be accorded VAT zero-rating, as provided for under the CREATE?</p>	<p>Q33: Is prior approval from the BIR needed to be secured by the local suppliers of goods/services of registered export enterprises in order for their sales to be accorded VAT zero-rating, as provided for under the CREATE?</p>
<p>A33: Yes. Sections 294(E) and 295(D), Title XIII of the Tax Code, as implemented by Section 5, Rule 2 of the amended CREATE IRR emphasize that VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.</p> <p>It is therefore of paramount importance to validate whether the said requisites are duly complied with before availment of the VAT zero-rate incentive by the supplier of the registered export enterprise. Absence of prior approval from the BIR may result in the disallowance of the VAT zero-rated sale of the supplier.</p>	<p>A33: Yes. Sections 294(E) and 295(D), Title XIII of the Tax Code, as implemented by Section 5, Rule 2 of the amended CREATE IRR emphasize that VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.</p> <p>It is therefore of paramount importance to validate whether the said requisites are duly complied with before availment of the VAT zero-rate incentive by the supplier of the registered export enterprise. Absence of prior approval from the BIR may result in the disallowance of the VAT zero-rated sale of the supplier.</p> <p>However, for sales transactions that are qualified for VAT zero-rating but failed to secure an approved application for VAT zero-rating with the BIR, prior application may not be required until March 9, 2022, or the effectivity of this RMC, subject, however, to the three (3) documentary requirements enumerated in Q & A No. 37 hereof.</p>

Revenue Memorandum Circular No. 50-2022 dated April 20, 2022**Circularizing the Updated List of Accredited Microfinance Non-Government Organizations (NGOs)**

This Circular provides for the Updated List of Accredited Microfinance NGOs (MF-NGOs), to wit:

MF-NGOs WITH UNEXPIRED CERTIFICATES OF ACCREDITATION			
NAME OF MICROFINANCE NGO	CERTIFICATE OF ACCREDITATION NO.	DATE OF ISSUANCE	DATE OF PRIOR MNRC ACCREDITATION
1. PEOPLE'S ALTERNATIVE LIVELIHOOD MICROFINANCE FOUNDATION OF SORSOGON (PALMES) INC.	0026-19	15-May-19	28-Mar-18
2. TULAY SA PAG-UNLAD, INC. (A MICROFINANCE NGO)	0027-19	15-May-19	28-Mar-18
3. KATUWANG RESOURCE CENTER, INC. (A MICROFINANCE NGO)	0028-19	14-Jun-19	11-Jul-18
4. USWAG DEVELOPMENT FOUNDATION INC. (A MICROFINANCE NGO)	0029-19	10-Dec-19	N/A
5. KPS-SMALL ENTERPRISE AND ECONOMIC DEVELOPMENT MICROFINANCE INC.	0001-20	27-Jan-20	28-Mar-18
6. URBAN PROGRAM FOR LIVELIHOOD FINANCE & TRAINING (UPLIFT) PHILIPPINES MICROFINANCE INC.	0001-21	29-Jan-21	28-Mar-18
7. SPES PAUPERUM FOUNDATION (SPFI) MICROFINANCE NGO INC.	0002-21	25-Aug-21	28-Mar-18

ACCREDITED MF-NGO FOR THE PERIOD 2022 TO 2025			
NAME OF MICROFINANCE NGO	CERTIFICATE OF ACCREDITATION NO.	DATE OF ISSUANCE	DATE OF PRIOR MNRC ACCREDITATION
8. ASA PHILIPPINES FOUNDATION INC. (A MICROFINANCE NGO)	0001-22	1-Mar-22	1-Mar-19
9. SEDP-SIMBAG SA PAG-ASENSO INC. (A MICROFINANCE NGO) DOING BUSINESS UNDER THE NAME AND STYLE OF SEDP-SIMBAG MICROFINANCE [FORMERLY: SEDP-SIMBAG SA PAG-ASENSO INC. (A MICROFINANCE NGO) DOING BUSINESS UNDER	0002-22	1-Mar-22	1-Mar-19

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THE NAME AND STYLE OF SEDP-SIMBAG]			
10. SAKLAW FOUNDATION INC. (A MICROFINANCE NGO)	0003-22	1-Mar-22	1-Mar-19
11. ALALAY SA KAUNLARAN MICROFINANCE SOCIAL DEVELOPMENT INC.	0004-22	1-Mar-22	1-Mar-19
12. ARDCI MICROFINANCE, INCORPORATED	0005-22	21-Mar-22	21-Mar-19
13. COMMUNITY ECONOMIC VENTURES (A MICROFINANCE NGO), INC.	0006-22	28-Mar-22	28-Mar-19
14. CORDILLERA COMMUNITY MICROFINANCE (CCMI) INC.	0007-22	1-Mar-22	1-Mar-19
15. JAIME V. ONGPIN MICROFINANCE FOUNDATION, INC.	0008-22	1-Mar-22	1-Mar-19
16. JMH MICROFINANCE, INC.	0009-22	1-Mar-22	1-Mar-19
17. KABALIKAT PARA SA MAUNLAD NA BUHAY, INC. (A MICROFINANCE NGO)	0010-22	1-Mar-22	1-Mar-19
18. KASANYANGAN CENTER FOR COMMUNITY DEVELOPMENT AND MICROFINANCE FOUNDATION, INC.	0011-22	28-Mar-22	28-Mar-19
19. KAZAMA GRAMEEN MICROFINANCE, INC.	0012-22	1-Mar-22	1-Mar-19
20. LIFEBANK MICROFINANCE FOUNDATION, INC. DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF LIFEBANK FOUNDATION	0013-22	1-Mar-22	1-Mar-19
21. 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	0014-22	28-Mar-22	28-Mar-19
22. RANGTAY SA PAGRANG-AY MICROFINANCE, INC.	0015-22	1-Mar-22	1-Mar-19
23. SERVIAMUS FOUNDATION INCORPORATED DOING BUSINESS UNDER THE NAME & STYLE OF SERVIAMUS MICROFINANCE	0016-22	21-Mar-22	21-Mar-19
24. SURIGAO ECONOMIC DEVELOPMENT AND MICROFINANCE FOUNDATION, INC.	0017-22	1-Mar-22	1-Mar-19

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25. BAYAN ENTERPRISE DEVELOPERS, GROWERS AND EVOLVERS-MICROFINANCE AND BUSINESS SERVICES, INC.	0018-22	21-Mar-22	21-Mar-19
26. ECLOF PHILIPPINES MICROFINANCE, INC.	0019-22	21-Mar-22	21-Mar-19
27. PAGASA NG MASANG PINOY MICROFINANCE, INC.	0020-22	21-Mar-22	21-Mar-19
28. RAFI MICRO-FINANCE, INC.	0021-22	21-Mar-22	21-Mar-19
29. ST. ELIZABETH COMMUNITY DEVELOPMENT PROGRAM (SECDEP), INC. (A MICROFINANCE NGO)	0022-22	21-Mar-22	21-Mar-19
30. CENTER FOR AGRICULTURE AND RURAL DEVELOPMENT (CARD), INC. (A MICROFINANCE NGO)	0023-22	21-Mar-22	21-Mar-19
31. AHON SA HIRAP, INC. (A MICROFINANCE NGO)	0024-22	28-Mar-22	28-Mar-19
32. TAYTAY SA KAUSWAGAN (A MICROFINANCE NGO), INC.	0025-22	28-Mar-22	28-Mar-19

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Revenue Memorandum Circular No. 52-2022,
issued on April 22, 2022
Clarifying the Filing and Payment Date of the
Franchise Tax and its Corresponding Return for
PAGCOR Licensees Under RMC No.32-2022

This Memorandum Circular clarifies that the BIR Form 2553 to be used by PAGCOR licensees and contractees in remitting the 5% franchise tax shall be filed, and the corresponding franchise tax shall be paid, within 25 days after the end of each taxable quarter.

Revenue Memorandum Circular No. 61-2022,
issued on April 28, 2022
Availability of Central Business Portal (CBP) for
Online Registration of All Types of Corporations,
Partnerships and Sole Proprietors

This Memorandum Circular announces the expansion of the CBP to the Department of Trade and Industry (DTI) and additional Local Government Units (LGUs) in processing business registration. Thus, new single proprietors, corporations, and partnerships can process their BIR registration online through the CBP.

Business taxpayers who are registering through the CBP may opt to pay their Annual Registration Fee (ARF) of Php500.00 and loose Documentary Stamp Tax (DST) of Php30.00 either electronically or manually. Further, through the CBP, business taxpayers who pay online through various electronic payment channels may immediately have their electronic Certificate of Registration (COR) with Quick Response (QR) Code be printed in A4 size bond paper. This shall have the same purpose as the signed hard copy issued by the BIR and can be posted together with the duly validated proof of payment of ARF in the principal place of business. Alternatively, business taxpayers may still opt to pay and complete its business registration manually.

Upon registration through the CBP, business taxpayers shall proceed immediately to the RDO

indicated in the electronic COR in order to complete its registration and buy a BIR Printed Receipts/Invoices (BPR/BPI) or secure an Authority to Print (ATP) receipts/invoices before they can have their own receipts/invoices printed by BIR Accredited Printers.

Business taxpayers shall also register their books of accounts on or before the deadline for filing of the initial quarterly income tax returns or the annual income tax return, whichever comes earlier.

However, any correction on the required tax returns or tax types on the electronically-issued COR from the CBP shall require updates by the taxpayer with the concerned RDO.

Revenue Memorandum Circular No. 63-2022,
issued on April 28, 2022
Clarifying the Proper Taxable Base of Excise Tax
in the Manufacturer's / Assembler's or
Importer's Sworn Statement and Integration of
the Monitoring, Supervision and Reporting of
Excisable Products Under Revenue
Administrative Order (RAO) No. 2-2014

The Memorandum Circular clarifies that there are three primary taxable bases in applying the excise tax rates for automobiles, namely:

1. Declared manufacturer's or importer's selling price, net of excise and value-added taxes;
2. Based on the 80% actual dealer's price, net of excise and value-added taxes; and
3. Based on the total cost of importation and expenses divided by 90%.

These taxable bases are reflected in the Manufacturer's / Assembler's and Importer's Sworn Statement, where the excise tax shall be computed using the highest identifiable taxable bases integrating the value of car air conditioner, radio and mag wheels, including the cost of installation, as well as the value of other factory-

installed accessory or optional equipment, or any other attachment installed on the unit removed or sold.

Further, the Circular notes that no Authority to Release Imported Goods (ATRIG) shall be issued for importation of automobiles without computing the three taxable bases to clearly show that the excise tax was based on the highest of these three values.

Revenue Memorandum Orders

Revenue Memorandum Order No. 26-2022, issued on April 29, 2022

Prescribing the Policies, Guidelines and Procedures in the Application for Revalidation of Tax Credit Certificates

Under this Memorandum Order, the following documentary requirements shall be submitted to the BIR for the processing of an application for revalidation of Tax Credit Certificates (TCC):

1. Letter request for revalidation of TCC of the taxpayer;
2. Original copy of the TCC for revalidation;
3. Original copy of the Secretary's Certificate or Board Resolution appointing the company's authorized signatory/ies and
4. representative/s;
5. Authorization letter of the employee/representative duly signed by the company signatory to follow-up the status of application and to pick-up the new TCC; and
6. Photocopy of two (2) valid government issued identification cards (IDs), and the company IDs of both the company signatory and its authorized employee/representative, if applicable.

The application for TCC revalidation, including the original copy of the TCC and the complete supporting documents, shall be filed with the Miscellaneous Operations Monitoring Division (MOMD) of the Collection Service at the BIR National Office. The application must be submitted anytime before the expiration of the validity period of the original TCC. A revalidated TCC shall only be issued after the concerned offices have certified that the taxpayer / TCC holder has no outstanding tax liability (i.e. an assessment that is already final and executory). The revalidated TCC, which reflects the unutilized amount or creditable balance, shall be valid for a period of five (5) years from the date of its issue.

Further, under the Memorandum Order, issued TCCs that remain unutilized by the taxpayer after five (5) years from the date of issue shall be considered invalid, unless an application for revalidation has been filed by the taxpayer before the end of the fifth year. It shall not be allowed for use as payment of any of the taxpayer's internal revenue tax liability, and the unutilized amount covered by the TCC shall revert to the general fund of the government.

Supreme Court Decisions

None.

Court of Tax Appeals Decisions

A. CTA En Banc Cases

CIR v. Fonterra Brands Philippines, Inc., CTA EB No. 2350 (CTA Case No. 9230), April 11, 2022

The CTA reiterated the rule that waivers extending

the prescriptive period of tax assessments must comply with Revenue Memorandum Order (RMO) No. 20-90 and must indicate the nature and amount of the tax due.

The CTA further reiterated that an assessment must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The taxpayer's due process rights involve the right to be informed of the amount of the tax due. This includes the right to know when the payment of the deficiency tax should be made in order to determine when penalties and interests begin to accrue.

Hemisphere - Leo Burnett, Inc. v. CIR, CTA EB No. 2371 (CTA Case No. 9749), April 11, 2022

Petitioner Hemisphere - Leo Burnett, Inc. argued that the issuance of a Letter of Authority (LOA) is governed by the prescriptive periods under Sections 203 and 222 of the Tax Code, as amended. Allegedly, prescriptive periods under the said provisions cover the BIR's action, process, or procedure of assessing and auditing, which includes the issuance of a valid LOA.

The CTA disagreed. The CTA explained that the prescriptive periods under Sections 203 and 222 of the Tax Code, as amended, do not apply to the issuance of a LOA. What is contemplated under Sections 203 and 222 is the issuance of a tax assessment or the filing of an action in court without an assessment for the collection of taxes, and not the issuance of a LOA.

The CTA further explained that a LOA, which merely gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment, is distinct and separate from an assessment, where the tax liability of the taxpayer is definitely determined.

CIR v. Gulf Air Company Philippine Branch, CTA EB No. 2439 (CTA Case No. 9334), April 12, 2022

Petitioner CIR argued that the parent company of Respondent Gulf Air Company Philippine Branch and Philippine Airlines, Inc. (PAL) entered into a Code Share and Block Space Agreement. Under the said Agreement, respondent, as operating carrier, operated the flights while PAL, as marketing carrier, was only given the right to sell tickets for certain Gulf Air flights. As such, PAL was not operating in Bahrain, the home country of the respondent. Therefore, the CIR averred that the respondent cannot claim an exemption from the payment of income tax under the Tax Code, as amended.

The CIR also stressed that the respondent failed to show that Philippine carriers are actually enjoying the income tax exemption in the home country of the respondent as allegedly required under Revenue Regulations (Rev. Regs.) No. 15-2013. The CIR alleged that there must be proof of actual enjoyment by Philippine carriers of income tax exemption in Bahrain.

The CTA disagreed. The CTA reaffirmed the doctrine that the law prevails over the administrative regulations implementing it. A plain reading of Republic Act (RA) No. 10378 shows that, for purposes of availing the exemption from income tax under the rule on reciprocity, it is sufficient that the international carrier's home country grants an income tax exemption to Philippine carriers.

CIR v. Premiumleisure and Amusement, Inc., CTA EB No. 2414 (CTA Case No. 9798), April 12, 2022

Petitioner CIR alleged that the tax exemption under Section 13(2)(b) of Presidential Decree (PD) No. 1869 is only granted to the Philippine Amusement and Gaming Corporation (PAGCOR) when it operates the casino by itself, and extends to entities who provide necessary services to

PAGCOR, in relation to its gaming operations. The CIR maintained that the tax exemption does not inure to the benefit of entities who are mere licensees of PAGCOR's franchise.

The CTA disagreed. Section 13(2) of PD No. 1869, as amended, explicitly granted PAGCOR exemption from the payment of corporate income tax and other taxes. Unmistakably, such exemption inures to the benefit of and extends to other entities with whom the PAGCOR operator has any contractual relationship with in connection with the operations of the casinos authorized to be conducted under the former's charter. In other words, it is not only PAGCOR that is exempt from paying taxes on its gaming operations, but also PAGCOR's licensees and franchisees.

CIR v. Pueblo De Oro Development Corporation, CTA EB No. 2303 (CTA Case No. 9553), April 18, 2022

Petitioner CIR claimed that there was no need for a Letter of Authority (LOA) to validate the tax assessment since the subject assessment did not emanate from an examination of respondent's books of accounts and other accounting records, but from the letter of the Board of Investments (BOI) to the BIR informing the latter of the denial of Respondent Pueblo De Oro Development Corporation's Income Tax Holiday (ITH) incentive for 2012.

The CTA disagreed. By alleging that the subject assessment was not obtained through an examination of respondent's books of accounts and other accounting records but simply through a letter issued by the BOI to the BIR, the CIR has, in effect, admitted that it did not conduct an independent investigation and examination of

the facts that would justify the issuance of a deficiency tax assessment. The CTA emphasized that the BIR is a quasi-judicial agency that should ensure that its decisions are based on an independent consideration of the law and the facts governing a case.

Corollary to the CIR's failure to conduct an actual audit or investigation was its failure to properly authorize the Revenue Officers (ROs) whose efforts led to the issuance of the assessments. The CTA reiterated the rule that before ROs can issue assessment notices, they should first be armed with a LOA. Without such LOA, the deficiency tax assessment shall be null and void.

Bangko Sentral ng Pilipinas v. CIR, CTA EB No. 2231 (CTA Case No. 9478), April 18, 2022

The CTA ruled that the Bangko Sentral ng Pilipinas (BSP) was able to prove its entitlement to its claim for refund for erroneously paid documentary stamp tax (DST). Section 199(I) of the Tax Code, as amended, provides that all contracts, deeds, documents and transactions related to the conduct of business of the BSP are exempt from DST.

CIR v. Western Guaranty Corporation, CTA EB No. 2437 (CTA Case No. 9338), April 20, 2022

Petitioner CIR contended that the Court in Division erred when it canceled and set aside the compromise penalty for taxable year 2011. According to the CIR, the imposition of the compromise penalty is legally mandated pursuant to Section 249 of the Tax Code, as amended.

The CTA disagreed. The CTA explained that a compromise penalty is a penalty imposed for the violation of provisions of the Tax Code, as amended. Further, there can be no compromise if there is no agreement between the parties, and a compromise penalty can only be imposed on a finding of criminal liability.

Accordingly, a compromise penalty cannot be imposed or collected without the agreement or conformity of the taxpayer. In the event that the taxpayer protests the assessment, the same shall signify that there was no agreement to speak of. In fact, the imposition of compromise penalties without the conformity of the taxpayer is considered illegal and unauthorized.

Alphaland Southgate Tower, Inc. v. CIR, CTA EB No. 2251 (CTA Case No. 9610), April 20, 2022

The CTA reiterated the well-settled rule that a final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Hence, such letter amounts to a final decision on a disputed assessment, and is therefore appealable to the CTA.

The CTA further cited *V.Y. Domingo Jewelers, Inc. v. CIR* promulgated last July 11, 2001, where the Supreme Court summarized the following principles:

1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest;
2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest;
3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required

supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

CIR v. Travellers International Hotel Group, Inc., CTA EB No. 2385 (CTA Case No. 9769), April 20, 2022

Petitioner CIR argued that the revenues of Respondent Travellers International Hotel Group, Inc. from its gaming operations are not exempt from income tax since the tax exemption granted under Presidential Decree (PD) No. 1869 inures only to those entities which provide necessary services to the Philippine Amusement and Gaming Corporation (PAGCOR) in connection with the latter's operations of casinos, and does not extend to the benefit of the licensees who are not under the control of PAGCOR. The CIR contended that it was never the intention of the framers of the law to extend the tax exemption to licensees of PAGCOR since the exemption only refers to the Franchise Holder, which is PAGCOR.

The CTA disagreed. It explained that the exemption of PAGCOR's contractees and licensees from income tax on its gaming operations was already settled by the Supreme Court in *Bloomberry Resorts and Hotels, Inc. v. BIR*. Hence, PAGCOR's contractees and licensees are exempt from the payment of corporate income tax and other taxes on their gaming operations pursuant to Section 13 of PD No. 1869, as long as the corresponding five percent (5%) franchise tax has been paid.

CIR v. The Orchard Golf and Country Club, Inc., CTA EB No. 2335 (CTA Case No. 8986), April 25, 2022

The CTA explained that the issuance of the Preliminary Assessment Notice (PAN), as well as giving the taxpayer fifteen (15) days from receipt of such PAN to respond thereto, are part of due process in the issuance of tax assessments. If the

taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default. It is only then that the CIR or his duly authorized representative can validly issue the Formal Letter of Demand and Final Assessment Notice (FLD/FAN).

In other words, the CIR or his duly authorized representative is duty bound to wait for the expiration of the 15-day period, reckoned from the date of the receipt of the PAN, before the FLD/FAN can be issued.

CIR v. EDS Manufacturing, Inc., CTA EB No. 2411 (CTA Case No. 8913), April 26, 2022

Petitioner CIR argued that under Section 13 of the Tax Code, as amended, the requirement of prior issuance of a valid Letter of Authority (LOA) before proceeding with tax investigation of a taxpayer only applies to Revenue Officers (ROs) in the Revenue District Office. Since the individuals who performed the audit and examination on Respondent EDS Manufacturing, Inc. were ROs under the Office of the Commissioner of Internal Revenue (OCIR) - LTS, the issuance of a valid LOA may be dispensed with.

The CTA disagreed. Section 6(A) of the Tax Code, as amended, restricts the authority to examine any taxpayer for correct determination of tax liabilities to the CIR or his duly authorized representatives. By way of exception, the CIR or his duly authorized representatives may authorize the examination of any taxpayer for the correct determination of tax liability.

Sections 10(c) and 13 of the Tax Code, as amended, allows the Revenue Regional Directors to issue LOAs in favor of ROs

performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region. In addition, Section D(4) of Revenue Memorandum Order (RMO) No. 43-90 provides that deputy commissioners and other BIR officials authorized by the CIR himself are permitted to issue a LOA.

Hence, the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the ROs. Conversely, the absence of such an authority renders the assessment or examination a patent nullity.

Milestone Holdings Corporation v. CIR, CTA EB No. 2224 (CTA Case No. 8858), April 27, 2022

Petitioner Milestone Holdings Corporation assailed the ruling of the Special Third Division in characterizing the issuance of the Warrant of Distraint or Levy (WDL) as “other matters” that should have been elevated by petition for review to the CTA. The petitioner argued that this would be in violation of the principle of exhaustion of administrative remedies in administrative law.

The CTA ruled that the jurisdiction of the CTA is not limited to decisions of the CIR involving assessments or refunds, but also includes “other matters” arising under the Tax Code, as amended, or other laws administered by the BIR. In *CIR v. Hambrecht & Quist Philippines, Inc.* promulgated on November 17, 2010, the Supreme Court clarified the jurisdiction of the CTA over “other matters” and further ruled that the CTA’s jurisdiction over “disputed assessments” and over “other matters” are separate and independent of each other.

B. CTA Division Cases

Mega Ricton Commercial and Industrial Corporation v. BIR, CTA Case No. 10398, April 13, 2022

The petitioners argued that they have a clear and legal right to be issued their respective Certificates of Tax Delinquencies (CTDs) and Acceptance Payment Forms (APFs). They posited that Section 17(b) of Republic Act (RA) No. 11213, otherwise known as the Tax Amnesty Act, qualifies them to avail of the tax amnesty even if there is no assessment. They likewise argued that the BIR has the imperative duty to issue a CTD and APF pursuant to Section 19 of the Tax Amnesty Act.

The CTA ruled that the petitioners' alleged right to the issuance of CTDs and APFs depends on their compliance with the existing laws, rules and regulations on Tax Amnesty. Under Section 5(A) of Revenue Regulations (Rev. Regs.) No. 4-2019 dated April 5, 2019, the documentary requirements that must be submitted by tax amnesty applicants, among others, are the following:

1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA), which should be completely and accurately accomplished and made under oath;
2. Acceptance Payment Form (APF) (BIR Form No. 0621-DA) duly validated by the Authorized Agent Banks (AABs) or APF duly stamped "received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs); and
3. Certificate of Tax Delinquencies/Tax Liabilities issued by the concerned BIR officers.

Contrary to petitioners' claim that they were qualified to avail of the Tax Amnesty, no TARs were presented as evidence, while the remaining documentary requirements (i.e., CTDs and APFs) are precisely the subject matter of this petition. Hence, petitioners failed to comply with the aforementioned Tax Amnesty requirements.

Sofgen Holdings Limited - Philippine Branch v. CIR, CTA Case No. 9691, April 21, 2022

Petitioner Sofgen Holdings Limited - Philippine Branch argued that the Letter of Authority (LOA) dated October 16, 2016, which covers the examination of its books of accounts and other accounting records for the period from April 1, 2015 to March 31, 2016, is void, since it follows the calendar year as its taxable year for national internal revenue tax purposes.

The CTA found the petition meritorious.

The CTA emphasized that the LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment. It is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the Revenue Officers (ROs), pursuant to Sections 6, 10(c), and 13 of the Tax Code, as amended. This grant of authority is issued or bestowed upon an agent of the BIR, i.e., a RO.

The CTA reiterated that the LOA should cover only one (1) taxable year, pursuant to Revenue Memorandum Order (RMO) No. 36-99 and RMO No. 19-2015.

In this case, the subject LOA covered the period from April 1, 2015 to March 31, 2016. Because the petitioner's taxable year followed the calendar year (i.e., January 1 to December 31, 2015), the subject LOA covered fractions of two taxable years in violation of the CIR's guidelines as well as jurisprudence on the matter. The LOA was therefore void.