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BIR Issuances

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SEC Issuances

- **SEC MC No. 07 series of 2022 issued on August 26, 2022** – Rules on Qualified and/or Eligible Personal Equity and Retirement Account (PERA) Investment Products

Court of Tax Appeals Decision

- **Premature Issuance of Final Assessment Notice/Final Letter of Demand** (*Commissioner of Internal Revenue v. Script2010, Inc, CTA EB No. 2363, August 25, 2022*)
- **VAT Refund on Sales of Electricity and Generation Services to Entities other than NPC** (*First Gen Hydro Corporation v. Commissioner of Internal Revenue, CTA EB No. 2456, August 18, 2022*)

DISCLAIMER: The contents of this bulletin are summaries of selected issuances from various government agencies and Court decisions. They are intended for guidance only and as such should not be regarded as a substitute for professional advice.

- **Appeal before the CTA must be filed within 30 days from the lapse of the 120-day period in VAT Refund, despite actual receipt of denial from the BIR** (*Lapanday Diversified Products Corp. v. Commissioner of Internal Revenue, CTA Case No. 9951, August 10, 2022*)
- **LOA as Instrument of Due Process** (*Commissioner of Internal Revenue v. Geniographics Incorporated, CTA EB No. 2357, August 8, 2022*)

BIR Issuances

Updates on the list of VAT-exempt medicines for identified illnesses (Revenue Memorandum Circular (RMC) Nos. 116-2022 and 119- 2022, issued in August 2022)

Under Republic Act No. 11534 (CREATE Act), medicines prescribed for hypertension, diabetes, high cholesterol, kidney diseases, mental illness, cancer and for COVID-19 treatment as identified by the DOH, thru FDA, are exempt from VAT.

RMC Nos. 116-2022 and 119-2022 publish the full text of the letters from Food and Drug Administration OIC Director General Oscar G. Gutierrez, Jr. endorsing the inclusion of additional medicines for VAT exemption and deletion of previously identified VAT exempt medicines prescribed for COVID-19 treatment.

As clarified under Q&A No. 1 of RMC No. 99-2021, the effectivity of the VAT exemption of the covered medicines and medical devices under the CREATE Act shall take effect on the date of publication by the FDA of the said updates to the said list.

Publication of RA No. 11900 (An act regulating the importation, manufacture, sale, packaging, distribution, use, and communication of vaporized nicotine and

non-nicotine products and novel tobacco products) (Revenue Memorandum Circular No. 118-2022 issued on August 08, 2022)

The BIR published RA No. 11900 which lapsed into law last July 25, 2022.

Under RA No. 11900, the BIR must direct the prompt recall, ban or seizure of Vaporized Nicotine and Non-Nicotine Products or Novel Tobacco Products that have not been registered with the BIR, including those that are offered for sale online. This is without prejudice to the filing of the appropriate cases and collection of correct taxes and duties, including applicable fines and penalties under RA No. 8424, as amended, and RA No. 10863 (Customs Modernization and Tariff Act).

To ensure that only authorized Vaporized Nicotine and Non-Nicotine Products or Novel Tobacco Products are made commercially available, the Department of Trade and Industry (DTI) and the Bureau of Industry and Regulation (BIR), in consultation with the pertinent stakeholders, shall design, promulgate, and use new and emerging innovative tools and technologies.

Brands of Vaporized Nicotine and Non-Nicotine Products and Novel Tobacco Products registered with the DTI and the BIR that are permitted for online sale should be listed on the DTI and BIR's website and shall be updated monthly.

Guidelines on the payment of penalties for IT-BPM RBEs violating the 70:30 WFH arrangement (Revenue Memorandum Circular No. 120-2022 issued on August 18, 2022)

FIRB Resolution No. 17-22 allowed RBEs in the IT-BPM sector to adopt a 30% WFH from April 1 to September 12, 2022.

RBEs exceeding the 30% threshold for at least a day shall pay, as penalty, the regular

income tax of 25% or 20%, as applicable, for the month/s when the violation took place.

In paying the said penalty, the following guidelines are prescribed by the BIR:

- RBEs with violation shall continue to file quarterly/annual income tax return following the usual procedure as if no violation was committed. However, they are required to complete the information on allowable deductions.
- Payment of penalty shall be made using BIR Form No. 0605 by choosing 'Others' under 'Voluntary Payment' and by indicating in the field provided the phrase "Penalty pursuant to FIRB Res. No. 17-2022". The tax type code shall still be "IT" and the ATC to be indicated is "MC 200".
- A separate computation for penalty shall be attached to the BIR Form 0605. A sample computation of penalty is illustrated in the RMC.
- Net Operating Loss Carry Over (NOLCO) shall not be a part of the computation for penalty and shall not be deducted from the total taxable income.
- Payment of penalty must be made on or before the due date prescribed for the filing and payment of quarterly income tax return, subject to adjustment upon the filing of the annual income tax return. For the quarters that already ended, the filing and payment of penalty shall be made within 10 days after the issuance of this Circular. Late filing and payment shall be subject to penalty for late filing and payment of income tax.
- If the violation happened during the last quarter of the fiscal year, the penalty shall be computed based on the manner prescribed in RMC No. 39-2022.
- For RBEs with violation of FIRB Resolution No. 19-21, the manner prescribed on RMC No. 39-2022 shall be followed.
- Violations committed beyond September 13, 2022 onwards may subject the RBEs to applicable taxes.

Lifting of suspension of field audit and other field operations (Revenue Memorandum Circular No. 121-2022 issued on August 22, 2022)

Under RMC No. 77-2022, all field audit, field operations, or any form of business visitation in execution of Letters of Authority/ Audit Notices (LOAs) or Mission Orders (MOs) by the Bureau of Internal Revenue has been suspended.

Now, through this RMC No. 121-2022, investigating offices such as the Revenue District Office, Regional Investigation Division, VAT Audit Sections/Office Audit Sections, National Investigation Divisions, Large Taxpayers Audit Divisions and LT VAT Audit units may request for the lifting of such suspension. Upon approval of the Memorandum Request by the Commissioner of Internal Revenue (CIR), the investigating office shall resume its field audit and other field operations on all outstanding letters of Authority/Audit Notices.

No new LOA, written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued except for instances enumerated in RMC 77-2022 and in case of reissuance of LOAs due to change of revenue officer and/or group supervisor.

Registration updates in preparation for BIR's Online Registration and Update System (ORUS) Implementation (Revenue Memorandum Circular No. 122-2022 issued on August 22, 2022)

As part of BIR's Digital Transformation Roadmap in 2022-2023, the Bureau will be launching Online Registration and Update System (ORUS) that will help taxpayers to register, update and transact registration-related transactions online.

In preparation for the implementation of ORUS, all taxpayers are advised to update

their registration records, such as e-mail address and contact information using the S1905 – Registration Update Sheet (RUS). The e-mail address should be the taxpayer’s official e-mail address, and shall be used by the BIR in serving BIR orders, notices, letters and other processes/communications to the taxpayers.

The RUS is available at the Client Support Section (CSS) at the Revenue District Office (RDO) and BIR’s official website under Advisory Section. The RUS may be submitted via e-mail to the concerned RDO where the taxpayer is registered. See Annex B of the RMC for the list of e-mail addresses of the RDOs.

Clarifications on the removal of the 5-year validity period on receipts/invoices (Revenue Memorandum Circular No.123-2022 issued on August 31, 2022)

Under RMC No. 123-2022, the BIR provides the following clarifications on the removal of the 5-year validity period on all manual and system generated principal and supplementary invoices and receipts pursuant to Revenue Regulations No. 6-2022, in line with the “Ease of Doing business and Efficient Government Service Delivery Act of 2018”.

Covered taxpayers

Taxpayers who are/ will be using principal and supplementary receipts/ invoices or those who will apply for any of the following are covered by the removal of the 5-year validity period:

- a. Authority to Print (ATP);
- b. Registration of Computerized Accounting System (CAS)/ Computerized Books of Accounts (CBA) and/or its components; and
- c. Permit to Use (PTU) Cash Register Machines (CRM)/ Point-of-sale (POS) Machines and Other Sales Receipting Software

Effectivity date

Removal of the 5-year validity period was effective on July 16, 2022.

Validity phrases

The phrase “THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE” and “Valid Until (mm/dd/yyyy) of the PTU shall no longer be required to be reflected on the footer of generated receipts/invoices. Likewise, the phrase “THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ACKNOWLEDGEMENT CERTIFICATE” is no longer required for the registration of CAS and/or its components.

Unused receipts/ invoices

Below guidelines shall be followed on the use of unused receipts/invoices:

Date of ATP		Unused Receipts/Invoices as of Expiry Date
Date of Issue	“Valid Until” as reflected in ATP/Receipts/Invoices	Can they still be issued? (Yes/No)
On or before July 16, 2017	On or before July ,15, 2022	No*
July 17, 2017 onwards**	July 16, 2022 onwards	Yes**

*All unused and expired receipts/ invoices which expired on or before July 15, 2022, shall be surrendered for destruction, together with an inventory listing to the RDO where the Head Office or Branch is registered on or before the 10th day after the validity period of the expired receipts/ invoices. Usage of expired receipts/ invoices shall be subject to penalty of P20,000 for the 1st offense and P50,000 for the 2nd offense.

Taxpayers with expired ATP on or before July 15, 2022, but failed to apply for subsequent ATP not later than sixty (60)-mandatory period prior to expiration shall not be liable to pay penalty for late application of ATP.

**Taxpayers with receipts/Invoices with existing ATP expiring on or after July 16, 2022 shall continue to issue such receipts/invoices until fully exhausted and the phrase “THIS INVOICE/RECIEPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP” and the “Validity period” shall be disregarded.

Transitory procedures

Taxpayers with registered PTU CRM/POS machines/CAS shall reconfigure its software to reflect the removal of the validity phrase and date. The configuration shall be done until December 31, 2022.

A written notification on the modification in the system due to the removal of validity phrase and date is no longer required to be submitted to the concerned RDO.

SEC Issuances

Rules on Qualified and/or Eligible Personal Equity and Retirement Account (PERA) Investment Products (SEC MC No. 07 series of 2022 issued on August 26, 2022)

Pursuant to Republic Act (R.A.) No. 9505 also known as the PERA Act of 2008 and its Implementing Rules and Regulations, the Securities and Exchange Commission (SEC) prescribes the following rules for the qualification and/or eligibility of PERA investment products falling under the purview of the SEC:

1. Below are the SEC-eligible PERA Investment Products
 - a. Securities that are registered pursuant to the requirements of the Securities Regulation Code and Investment Company Act
 - i. A newly formed mutual fund including any sub-fund of an umbrella fund and Exchange Traded Funds subject certain conditions
 - ii. REIT shares
 - iii. Corporate Bonds with an investible rating issued by an accredited Credit Rating Agency
 - iv. Equity Securities which form part of the PSE Dividend Yield Index;
 - b. Exempt securities
 - i. Government Securities
 - ii. Securities issued by Bangko Sentral ng Pilipinas

- iii. Corporate Bonds issued by Banks in compliance with the requirements of the Bangko Sentral ng Pilipinas
- c. Other securities provided that the product is considered as non-speculative, readily marketable, and with a track record of regular income payment to investors.

2. A security of may lose its PERA investment product eligibility under certain circumstances. See full text of the circular for the grounds on losing eligibility.
3. The issuers of securities that have been qualified by the SEC to be eligible as PERA investment products shall comply with any reports and other information that the SEC may prescribe and/or require.
4. Violations of the rules on qualified and/or eligible investment products, and the laws, rules, regulations and other issuances identified under Section 6 of the circular, shall, in the discretion of SEC, be imposed any of the sanctions available and applicable under these Rules and the other applicable laws, rules, regulations and other issuances without prejudice to applying PERA Rule 18—Penalty and other civil and criminal liability provided for under the applicable laws for the same act or omission.

Court of Tax Appeals Decisions

Premature Issuance of Final Assessment Notice/Final Letter of Demand (Commissioner of Internal Revenue v. Script2010, Inc., CTA EB No. 2363, August 25, 2022)

Unquestionably, the BIR must give taxpayers the chance to contest PAN within fifteen (15) days after receipt of the same. Failure to do so would suggest that the BIR has prematurely decided on or, worse, has not taken into consideration the taxpayer's response to the PAN at all, which is a clear breach of due process in tax assessment processes. It's also crucial to remember that the fifteen (15) day window begins to count down from the moment the taxpayer receives the PAN, not from the moment it was issued.

In this Court En Banc case, the taxpayer received the PAN, dated 22 December 2014 on 29 December 2014. Accordingly, respondent had until 13 January 2015 within which to file a Reply to the PAN. Until such date, therefore, the BIR was not allowed to issue a FLD/FAN.

However, the BIR issued the subject FLD/FAN on 8 January 2015, which was five (5) days earlier than the last day to file a Reply to the PAN. Thus, the BIR violated the taxpayer's right to due process, and therefore the assessment was considered null and void.

**VAT Refund on Sales of Electricity and Generation Services to Entities other than NPC
(First Gen Hydro Corporation v. Commissioner of Internal Revenue, CTA EB No. 2456, August 18, 2022)**

The Company filed for refund of its alleged unutilized input VAT on the VAT zero rated sale of power or fuel generated through renewable sources of energy. It argued that where the claim for tax refund is premised on the NIRC of 1997, as amended, and not Republic Act No. 9136 (RA 9136), otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the requirement of the Certificate of Compliance issued by the ERC is inapplicable.

The court ruled that it is clear that for sales of electricity and generation services to the National Power Corporation (NPC) to qualify for VAT zero-

rating, the VAT- registered taxpayer needs only show that it is a VAT - registered entity and that it has complied with the invoicing requirements under the NIRC of 1997, as amended, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95. However, for sales of electricity and generation services to entities other than NPC to qualify for VAT zero-rating, the VAT -registered taxpayer must comply with invoicing requirements under Sections, 108(B)(3), 113, and 237 of the NIRC of 1997, as amended, and must submit its COC issued by the ERC as required under EPIRA. Thus, the court ruled that the sales to entities other than NPC without COC shall not be entitled to VAT zero-rating.

**Appeal before the CTA must be filed within 30 days from the lapse of the 120-day period in VAT Refund, despite actual receipt of denial from the BIR
(Lapanday Diversified Products Corp. v. Commissioner of Internal Revenue, CTA Case No. 9951, August 10, 2022)**

On April 2, 2008, an Application for Tax Credit/Refund of Value-Added Tax Paid was filed by the taxpayer before the BIR for the 1Q and 2Q 2007. On September 30, 2008, the Company filed another application to cover the 3Q and 4Q of TY 2007. On September 14, 2018, the Company received the letter of denial from the BIR. On October 15, 2018, the Company filed the present judicial claim before the CTA Division.

Republic Act No. 1125 or *An Act Creating Court of Tax Appeal*, as amended, categorically states that a party adversely affected by a decision or inaction of the CIR may file an appeal before the CTA within thirty (30) days after the receipt of such decision or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) thereof. Thus, the judicial claim must be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling or after the expiration of the 120- day period,

whichever is sooner. The 120-day period started to run from the time the administrative claim was filed. Due to respondent's inaction within the 120-day period, there is a "deemed denial decision". Petitioner should have appealed the "deemed denial decision" by filing its Petition for Review before this Court not later than August 31, 2008 for the 1st and 2nd quarters, and February 28, 2009 for the 3rd and 4th quarters for the taxable year 2007. Hence, the Court ruled that the judicial claim for VAT refund was not filed on time.

**Letter of Authority (LOA) as Instrument of Due Process
(Commissioner of Internal Revenue v. Geniographics Incorporated, CTA EB No. 2357, August 8, 2022)**

In this case, respondent was assessed by BIR examiner who only had a Letter Notice. The BIR argues that tax audit/investigation of respondent's deficiency taxes is the subject of Letter Notice issued by the CIR himself who was authorized under the NIRC in relation to Revenue Memorandum Order No. 40-03 ("RMO 40-03") and Revenue Memorandum Order No. 55-10 ("RMO 55-10").

However, a LOA is an absolute necessity in case of tax assessment. The fundamental requirement is that revenue officials must have a LOA in hand before they can send out assessment notices. This principle is unaffected by our tax legislation. A LOA is an instrument of due process for the protection of taxpayers. It ensures that when evaluating a taxpayer, tax agents will only work within the scope of their power.

A mere LN cannot ensure the observance of due process. Thus, the assessment was considered null and void.