

Leading business in challenging times



Client Advisory Letter

Needless appraisal ^{p3} | Equality in taxation ^{p4}

Hard deadlines ^{p9} | Free float ^{p12}

August 2020



At a glance

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Taxes, compliance matters, assessments, and refunds

Secondary purpose

Taxability of foreign exchange gains derived by a PEZA-registered enterprise

In 2007, a business process outsourcing company registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone IT (Export) Enterprise under the income tax holiday (ITH) regime derived foreign exchange (forex) gains from its hedging contract with a bank.

Through the hedging contract, the company used its earned United States Dollars (USD) to purchase Philippine Pesos (“Pesos”) on pre-determined dates and exchange rates in order to pay local business expenses.

After the declaring the forex gains in its income tax return and paying income tax thereon, the company filed a claim for refund of said income taxes. According to the company, since its PEZA-registered activity is the establishment of a contact center, forex gains derived under the hedging contract which is related to the contact center is covered by the ITH. Further, the activity that led to the forex gain involved the sale of USD earned through the contact center and the purchase of Pesos needed to pay operational expenses.

The Court of Tax Appeals (CTA) denied the claim because even though the earned USD was being used to purchase Pesos for purposes of paying the company’s ordinary and necessary expenses, the fact still remained that the forex gains were derived from the hedging contract with the bank and not from the registered activity as a contact center.

However, the Supreme Court (SC) reversed the CTA decision. The SC granted the claim for refund and ruled that hedging is considered very much related to the registered activity of the company, hence, is also subject to the ITH. It pointed out that the secondary purpose in the company’s Articles of Incorporation authorizes the latter to enter into a hedging contract to protect against devaluation in terms of local currency.

(GR No. 216601, promulgated 7 October 2019)

Glossary

IT – Information Technology

Needless appraisal

Determining the fair market value of shares sold, exchanged or bartered

For capital gains tax purposes, the Secretary of Finance has discarded the use of the Adjusted Net Asset Method (which adjusts assets and liabilities to fair market values) in determining the fair market value (FMV) of unlisted shares sold, exchange or bartered.

The new rules in determining the FMV of shares are as follows:

Shares	Prima facie FMV or FMV
Common shares	Book value based on the latest available financial statements (AFS) duly certified by an independent public accountant prior to the date of sale, but not earlier than the immediately preceding taxable year
Preferred shares	Liquidation value - which is equal to the redemption price of the preferred shares as of balance sheet date nearest to the transaction date, including any premium and cumulative preferred dividends in arrears
Common shares (when there are also preferred shares)	Book value computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and then dividing the result by the number of outstanding common shares as of balance sheet date nearest to the transaction date

Significantly, the book value of common shares or the liquidation value of the preferred shares of stock does not anymore need to be adjusted to include any appraisal surplus from any property of the corporation not reflected or included in the latest AFS. In other words, the latest AFS shall be sufficient in determining the FMV of the shares.

(Revenue Regulations No. 20-2020, published 19 August 2020)

Equality in taxation

Implementing tax parity between Islamic and conventional banking transactions

Republic Act No. 11439 entitled “An Act Providing for the Regulation and Organization of Islamic Banks” mandates neutral tax treatment between Islamic and equivalent conventional banking transactions. Pursuant to this mandate, the Secretary of Finance issued implementing regulations which provide for the following:

- Islamic banking transactions must have parity of tax treatment, such that Islamic banking transactions are taxed no more heavily and no more lightly than conventional banking transactions.
- Where an Islamic banking arrangement is economically equivalent to a conventional bank product, the tax treatment should be the same.
- Any reference to interest shall apply to gains or profits received and expenses incurred in Islamic banking arrangements, in lieu of interest income and/or expenses under the conventional banking transactions.
- Any reference to a disposal or lease of an asset shall not apply to any disposal or lease of an asset by or to a person that is carried out in accordance with Islamic banking arrangements as defined by the Bangko Sentral ng Pilipinas.
- Islamic banks shall ensure that financial statements are prepared in accordance with the Philippine Financial Reporting Standards taking into account the differences between Islamic and conventional banking transactions.
- Authorized conventional banks with Islamic banking arrangements shall maintain a system segregating the transactions of the Islamic banking unit from its conventional banking business
- Authorized Islamic banks shall register with the BIR similar to conventional banks following existing guidelines. Islamic banks, including conventional banks with Islamic banking windows, shall issue receipts on profits, gains and fees derived from banking operations.

(Revenue Regulations No. 17-2020, published 8 August 2020)

Glossary

BIR – Bureau of Internal Revenue

Temporary establishment

Tax issues regarding the prolonged stay of alien individuals

The BIR issued the following guidelines and requirements to address unplanned tax implications and burdens with respect to alien employees of foreign corporations whose stay in the Philippines was prolonged as a result of the COVID-19 pandemic:

1. With respect to alien employees covered by tax treaties to which the Philippines is a signatory, employment income will not be subject to Philippine taxation if:
 - a. The employee has not been present in the Philippines for more than 183 days (more than 120 days for residents of Poland and at least 90 days for residents of the United States of America) in aggregate in the year of income, fiscal year, calendar year or any 12-month period, depending on the applicable tax treaty;
 - b. The remuneration is paid to the employee by or on behalf of an employer that is not a resident of the Philippines; and
 - c. The remuneration is not deductible against the profits of a permanent establishment (PE) which the foreign employer has in the Philippines.
2. The Philippines may tax employment income of alien employees covered by tax treaties to which the Philippines is a signatory if:
 - a. The employee is in the Philippines for more than 183 days (more than 120 days for residents of Poland and at least 90 days for residents of the United States of America);
 - b. The employer is a resident of the Philippines; or
 - c. The non-resident employer has a PE in the Philippines which bears the remuneration.
3. Where an alien individual is prevented from leaving the Philippines on his or her scheduled departure date as a result of travel restrictions imposed as a COVID-19 safety measure, the individual resident will not be regarded as being present in the Philippines for tax residence purposes after the scheduled departure date.
4. A work-from-home arrangement between a foreign company and its employees in the Philippines due to compliance with quarantine measures would not create a PE on the part of the foreign company

because the arrangement lacks a certain degree of permanency and the home office is not at the disposal of the foreign company.

5. Temporary interruptions of construction activities due to the COVID-19 pandemic should be included in computing the duration of a construction site and in determining if the same constitutes a PE.
6. Where an employee, partner or agent of a non-resident foreign corporation (NRFC) continues to be present in the Philippines as a result of COVID-19 travel restrictions, the BIR shall disregard such presence for income tax purposes with respect to said NRFC if:
 - a. The NRFC did not have a PE before the effects of COVID-19;
 - b. There are no other changes in the NRFC's circumstances except for the extended stay of the employee, partner or agent in the Philippines due to travel restrictions; and
 - c. The employee, partner or agent should leave the Philippines as soon as circumstances permit.
7. In order to prove that the extended presence was due to COVID-19 travel restrictions, the concerned individual or company shall submit to the BIR the:
 - a. Authenticated sworn certification stating the relevant facts and circumstances of the *bona fide* presence of the employee in the Philippines;
 - b. Duly executed contract;
 - c. Certified true copies (CTCs) of the confirmed booking or flight itinerary for the original flight and for the re-booked flight;
 - d. CTC of the travel advisory on the flight cancellation issued by the airline company;
 - e. CTC of the boarding pass and employee's passport, including blank pages; and
 - f. Other documents that the BIR shall deem necessary.

(Revenue Memorandum Circular No. 83-2020, issued 17 August 2020)

Glossary

BIR – Bureau of Internal Revenue

CPA – Certified Public Accountant

eAFS expansion

Using the eAFS System in submitting other ITR attachments

The eAFS System is now available not only for the submission of attachments to the 2019 annual income tax return (ITR) but also for the submission of:

1. Attachments to annual ITRs with fiscal year accounting period; and
2. Attachments to quarterly ITRs.

All taxpayers availing the facilities of the eAFS System, whether or not registered under the Large Taxpayers Service, shall scan the required documents and comply with the following procedures:

- For the submission of attachments to the annual ITR, the following categories and file naming conventions shall be observed:

Document group and file name	Manually filed	Electronically filed
File 1 EAFS[TIN]ITRT YMMYYY	<ul style="list-style-type: none"> • ITR • Proof of payment 	<ul style="list-style-type: none"> • ITR • Filing Reference Number (FRN) / Email confirmation • Proof of payment / Acknowledgment receipt
File 2 EAFS[TIN]AFST YMMYYY	<ul style="list-style-type: none"> • AFS (Audited Financial Statement) composed of the following: • Certificate of Independent CPA, if applicable • Account Information Form and Financial Statements • Statement of Management's Responsibility for ITR 	
File 3 EAFS[TIN]OTH TYMMYYYY-01	<ul style="list-style-type: none"> • BIR Form No. 2304 • BIR Form No. 2307 • Tax debit memo, if applicable • BIR Form No. 1606 • Proof of prior year's excess credits, if applicable • Proof of foreign tax credits, if applicable 	

Document group and file name	Manually filed	Electronically filed
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- For amended ITR, proof of tax payment and previous ITR
- Report of electronically submitted Summary Alphalist of Withholding Tax at Source (SAWT), if applicable
- Proof of other tax payments / credit, if applicable
- BIR Form No. 2316
- Others

- For the submission of attachments to the quarterly ITR, the following documents shall be scanned and classified:

Document group and file name	Manually filed	Electronically filed
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File 1 EAFS[TIN]ITR# QMMYYY	Quarterly ITR (BIR Form No. 1701Q or 1702Q)	Filing Reference Number / Email confirmation
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File 3 EAFS[TIN]OTH# QMMYYYY-01	<ul style="list-style-type: none"> • Emailed confirmation receipt of SAWT in the eSubmission Facility • BIR Form No. 2307 	
File size should not exceed 4.8GB	<ul style="list-style-type: none"> • Tax debit memo • Others 	

In case of additional file:

File 4
EAFS[TIN]
OTH#QMMYYY
Y-02

Where “#” is the Taxable Quarter

Notwithstanding the electronic submission, taxpayers must keep the original copies in accordance with Section 203 of the Tax Code for the period prescribed under Revenue Regulations No. 17-2013.

(Revenue Memorandum Circular No. 82-2020, issued 11 August 2020)

Glossary

BIR – Bureau of Internal Revenue

Payment options

Manner of paying taxes during the MECQ from 4 August to 18 August 2020

In light of the Modified Enhanced Community Quarantine (MECQ) in the NCR, Bulacan, Cavite, Laguna and Rizal from 4 August to 18 August, taxpayers under the jurisdiction of Revenue District Office (RDO) Nos. 24 to 34 and 38 to 57 have the following tax filing/payment options:

1. Tax returns may be filed with and taxes paid at the nearest authorized agent banks (AABs), regardless of RDO jurisdiction.
2. Tax returns may be filed with and taxes paid to Revenue Collection Officers (RCOs) of the nearest RDO, even in areas where there are AABs.

Cash payments should not exceed PHP20,000 while check payments have no limitation if made **to the RCO in the district office**. All check payments should be made payable to the Bureau of Internal Revenue. The name and branch of the receiving AAB may no longer be indicated therein.

3. Electronic Filing and Payment System (eFPS) taxpayers shall continue to file through the eFPS and settle the tax liabilities with the AABs where they are enrolled. On the other hand, those filing tax returns via the eBIRForms facility may pay taxes through:
 - a. Land Bank of the Philippines (LBP) Link.biz Portal (for taxpayers who have ATM accounts with LBP and/or holders of BancNet ATM/Debit/Prepaid Card, and taxpayers utilizing PesoNet facility (depositors of RCBC and Robinsons Bank))
 - b. Development Bank of the Philippines Pay Tax Online (for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card)
 - c. Union Bank Online Web and Mobile Payment Facility (for taxpayers who have accounts with Union Bank of the Philippines)
 - d. Mobile payment (GCash/PayMaya)

Accordingly, AABs are mandated to:

1. Accept all tax payments from taxpayers registered under RDO Nos. 24 to 57, even out-of-district returns;

2. Accept over-the-counter tax filings and payments by eFPS filers who encountered problems in paying through eFPS; and
3. Accept check payments from any taxpayer even without the name of the receiving AAB branch indicated in the check, provided, that all check payments shall be made payable to the Bureau of Internal Revenue.

The foregoing is effective until the MECQ is lifted and when the above areas have been placed under General Community Quarantine (GCQ).

Note: President Rodrigo Duterte placed NCR, Bulacan, Cavite, Laguna and Rizal under GCQ starting 19 August 2020.

(Revenue Memorandum Circular Nos. 80-2020 and 79-2020, issued 6 and 5 August 2020; and Bank Bulletin Nos. 12-2020 and 11-2020, dated 6 and 5 August 2020)

Taxing Cebu

Manner of paying taxes in Metro Cebu during the MECQ

In light of the Modified Enhanced Community Quarantine (MECQ) in Metro Cebu, taxpayers under the jurisdiction of Revenue Region No. 13 – Cebu City have the following tax filing/payment options:

1. Tax returns may be filed with and taxes paid at the nearest authorized agent banks (AABs).
2. Tax returns may be filed with and taxes paid to the nearest Revenue Collection Officers authorized by the Revenue District Office.
3. Tax returns may be filed with and taxes paid via the eBIRForms facility may pay taxes through:
 - a. Land Bank of the Philippines (LBP) Link.biz Portal (for taxpayers who have ATM accounts with LBP and/or holders of BancNet ATM/Debit/Prepaid Card, and taxpayers utilizing PesoNet facility (depositors of RCBC and Robinsons Bank))
 - b. Development Bank of the Philippines Pay Tax Online (for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card)
 - c. Union Bank Online Web and Mobile Payment Facility (for taxpayers who have accounts with Union Bank of the Philippines)
 - d. Mobile payment (GCash/PayMaya)

The foregoing is effective until the MECQ is lifted and when Metro Cebu has been placed under General Community Quarantine (GCQ).

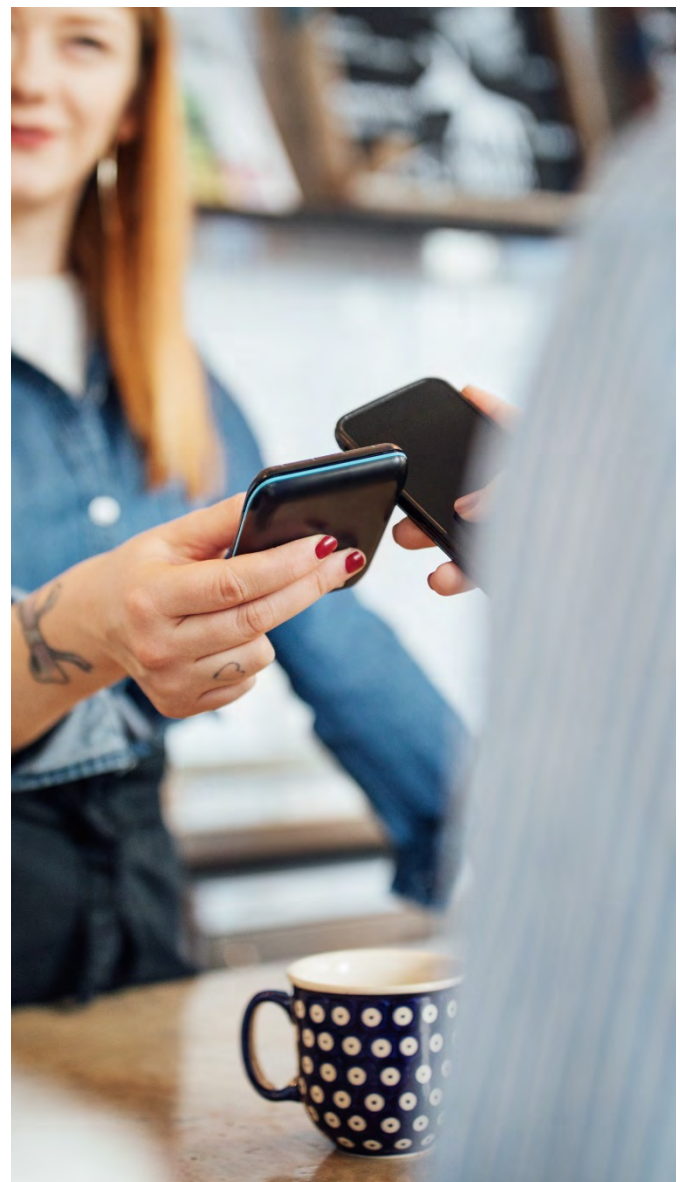
(Revenue Memorandum Circular No. 78-2020, issued 30 July 2020)

Issues in Makati

Requesting all AABs under RR No. 8A to accept tax filings and payments

In light of problems encountered by taxpayers within the jurisdiction of Revenue Region (RR) No. 8A, all authorized agent banks (AABs) under RR No. 8A are requested to accept all tax returns/payments of taxpayers from Revenue District Office Nos. 47 – East Makati, 48 – West Makati, 49 – North Makati and 50 – South Makati.

(Bank Bulletin No. 10-2020, 10 July issued 2020)



Latest on regulatory landscape

Indefinite term

SEC guidelines on the perpetual existence of corporations

The SEC has issued the following guidelines in implementing Section 11 of the Revised Corporation Code (RCC) which provides for the perpetual existence of corporations:

1. Corporations incorporated since the effectivity of the RCC shall have perpetual existence unless their articles of incorporation (AOI) provide a specific corporate term.
2. Corporations incorporated under Batas Pambansa Bilang No. 68 (Corporation Code of the Philippines) and Act No. 1459 (The Corporation Law)
 - a. The term of a corporation incorporated prior to the effectivity of the RCC shall be deemed perpetual without any action on the part of the corporation. However, the corporation has the option to amend Article 4 of its AOI to reflect its perpetual term by a vote of a majority of its Board of Directors or Trustees, and by a vote of the stockholders representing a majority of the outstanding capital stock or of the majority of the members.
 - b. A corporation incorporated prior to the effectivity of the RCC which opts to continue its present term pursuant to its AOI shall file with the SEC a Notice with attached Directors' Certificate certifying that the decision to retain the term specified in the AOI was approved by a majority vote of the Board of Directors or Trustees, and by a vote of the stockholders representing a majority of the outstanding capital stock (including non-voting shares) or of the majority of the members.
 - i. Said Notice should be signed by at least a majority of the members of the Board of Directors or Trustees and attested by the Corporate Secretary. It must be submitted to the Company Registration and Monitoring

Department of the SEC within two years from 23 February 2019, or until 23 February 2021.

- ii. A Certificate of Filing Notice to Retain Specific Corporate Term shall be issued to the corporation.
- iii. If the required Notice is not filed, the term of the corporation shall be treated as perpetual after the lapse of the two-year period.

3. Amendment to extend or shorten term of corporations with a specific term

The following corporations may amend their AOI to extend or shorten their specific terms pursuant to Section 11 of the RCC:

- a. A corporation incorporated under the RCC whose AOI provides for a specific term; and
- b. An existing corporation incorporated under the Corporation Code and The Corporation Law that opted to retain its specific term.

The amendment must be approved by a vote of a majority of its Board of Directors or Trustees, and by a vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock.

The extension cannot be made earlier than three (3) years prior to the original or subsequent expiration date of the corporate term, unless there are justifiable reasons for extension as may be determined by the SEC.

The extension of the corporate term shall take effect only on the day following the expiry date.

4. Amendment from specific term to perpetual term

The following corporations may amend their specific terms to perpetual terms:

- a. A corporation incorporated under the RCC whose AOI provides for a specific term; and
- b. An existing corporation incorporated under the Corporation Code and The Corporation Law that notified the SEC of its decision to retain its specific term.

The amendment must be approved by a vote of a majority of its Board of Directors or Trustees, and by a vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock.

Glossary

SEC – Securities and Exchange Commission

5. Amendment from perpetual term to specific term

The following corporations may amend their perpetual terms to specific terms:

- a. A corporation incorporated under the RCC whose AOI provides for a perpetual term;
- b. An existing corporation incorporated under the Corporation Code and The Corporation Law whose corporate term was treated as perpetual for failure to comply with the notification required under item 2.b above; and
- c. A corporation that amended its AOI to reflect a perpetual term.

The amendment must be approved by a vote of a majority of its Board of Directors or Trustees, and by a vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock.

6. Appraisal Right of Dissenting Stockholders

Any change in corporate term pursuant to Section 11 of the RCC shall be without prejudice to the appraisal right of dissenting stockholders.

(SEC Memorandum Circular No. 22-2020, published 23 August 2020)

Fixing numbers

Independent directors and sectoral representatives of exchanges

The SEC promulgated rules regarding the number of independent directors and sectoral representatives in the board of directors (BOD) of exchanges and other organized markets in the Philippines.

Independent directors are persons who are independent of management and free from any business or other relationship which could, or could reasonably be perceived to materially interfere with their exercise of independent judgment in carrying out their responsibilities as directors.

On the other hand, sectoral representatives are persons who represent the interests of issuers, investors, and other market participants.

The rules provide as follows:

- Independent directors shall constitute at least one-third (1/3) of the members of the BOD of exchanges and other organized markets.

They shall have the relevant experience in or working knowledge of the capital or financial markets for at least three years prior to their election.

- There shall be at least four sectoral representatives, with each sector having at least one representative in the BOD of exchanges or other organized markets.

A person may be elected as a sectoral representative for a maximum of ten years with a mandatory cooling off period of at least one year after the first five years.

- Both independent directors and sectoral representatives shall have the relevant experience in or working knowledge of the capital or financial markets for at least three years prior to their election.

(SEC Memorandum Circular No. 20-2020, published 14 August 2020)

Mandatory signatories

Who are required to sign the Manual on Corporate Governance

Public companies (PCs) and registered issuers (RIs) are required to submit a new Manual on Corporate Governance (MCG) pursuant to SEC Memorandum Circular No. 24-2019 on or before 12 July 2020. In light of the COVID-19 situation, this deadline was extended to **30 September 2020**.

Importantly, the signatories of the MCG shall be the company's Chairman of the Board **and** Compliance Officer. MCGs submitted with incomplete and/or incorrect signatories shall be deemed as not filed, hence, subject to a basic penalty of PH₱10,000 plus a monthly penalty of PH₱1,000 until the MCG is submitted.

PCs and RIs publicly listed in the Philippine Stock Exchange are not covered by the foregoing.

(SEC Memorandum Circular No. 19-2020, published 11 August 2020)

Hard deadlines

New deadlines and procedures for submitting hard copies of the AFS and GIS

The SEC issued extended deadlines and filing procedures for the submission of hard copies of Audited Financial Statements (AFS) and General Information Sheet (GIS) to the SEC by the following corporations:

- Corporations with fiscal years ending:

Glossary

SEC – Securities and Exchange Commission

- o 30 November 2019
- o 31 December 2019
- o 31 January 2020
- o 29 February 2020
- o 31 March 2020
- o 30 April 2020
- o 31 May 2020
- o 30 June 2020
- Corporations which held their annual stockholders'/members' meetings during the prior Enhanced Community Quarantine (ECQ) and ECQ in the NCR and other cities or provinces where their principal offices are located

1. Adjusted deadlines

a. AFS

Corporations with fiscal year ended 30 November 2019 or 31 December 2019, regardless of their SEC registration or license numbers, have until **30 September 2020** to submit the hard copies of their AFS.

Accordingly, the filing schedule based on the last digit of corporations' SEC registration or license numbers shall no longer apply.

Corporations with fiscal years ended between 31 January 2020 and 30 April 2020 shall have the following deadlines:

Fiscal Year End	Previous Adjusted Deadline	New Deadline
31 January 2020	29 July 2020	28 August 2020
29 February 2020	27 August 2020	28 September 2020
31 March 2020	27 September 2020	27 October 2020
30 April 2020	12 October 2020	11 November 2020

Glossary

NCR – National Capital Region
 SEC – Securities and Exchange Commission

b. GIS

Corporations, which held their annual stockholders' or members' meetings during the previously imposed ECQ and Modified ECQ (MECQ) shall have until **30 September 2020** to submit the hard copies of their GIS.

2. Modes of filing

a. SEC Main Office

Submissions to the SEC Main Office shall be made through courier or registered mail only under SEC Express Nationwide Submission (SENS).

To submit reports using SENS, corporations only need to:

- i. accomplish the application form at **<https://sens.secexpress.ph>**;
- ii. print the generated mailing label, along with the checklist and undertaking form;
- iii. bring the printouts and documents to any courier or Philippine Postal Corporation (PHLPost); and
- iv. pay the corresponding courier fees.

Corporations shall submit three copies of each report or four copies should they wish to receive a return copy.

Corporations may request for their return copies by including in their submissions prepaid return envelopes with stamps. Alternatively, corporations may request for plain or authenticated copies of their AFS, GIS and other documents through the SEC Express System at <https://secexpress.ph> after two months from receipt.

b. SEC Extension Offices

Corporations headquartered outside NCR may submit the hard copies of their AFS and GIS to the nearest SEC Extension Office either in person or through courier or PHLPost without using the SENS facility.

Corporations shall submit four copies of each report or five copies should they wish to receive a return copy.

Corporations may request for their return copies by including in their submissions prepaid return envelopes with stamps. Alternatively, corporations may request for plain or authenticated copies of their AFS, GIS and other

documents from the concerned SEC Extension Office after two months from receipt.

c. Email Submissions (Optional)

Corporations may send, in advance, the scanned copies of their duly signed and, if applicable, notarized reports through email at the following addresses:

Receiving Office	Email Address	
	AFS	GIS
Main Office	ermdfs1@sec.gov.ph ermdfs2@sec.gov.ph	mlmliwanag@sec.gov.ph mtdmabuyo@sec.gov.ph
Baguio	reports_beo@sec.gov.ph	
Tarlac	reports_teo@sec.gov.ph	
Legazpi	reports_leo@sec.gov.ph	
Cebu	reports_ceo@sec.gov.ph	
Bacolod	reports_bacolod@sec.gov.ph	
Iloilo	reports_iloilo@sec.gov.ph	
Cagayan de Oro	reports_cdo@sec.gov.ph	
Davao	reports_deo@sec.gov.ph	
Zamboanga	reports_zeo@sec.gov.ph	

The reports shall be considered received on the date stated in the Acknowledgment Receipt (AR) that the SEC shall email.

The hard copies of the reports, together with the AR, shall still be submitted to the SEC Main Office through SENS or to the SEC Extension Office concerned in person or through courier or mail on or before the adjusted deadlines provided above.

Failure to submit the hard copies of the reports before the deadlines, notwithstanding the submission of the reports through email, shall be subject to penalties.

(SEC Notice, dated 11 August 2020)

Glossary

PSE – Philippine Stock Exchange

SEC – Securities and Exchange Commission

Lock-Up Rule

Revising the mandatory lock-up rule for small, medium and emerging board listing

The SEC approved the revisions to PSE Listing Rules regarding the mandatory lock-up for companies listing in the Small, Medium and Emerging (SME) Board of the Exchange (“SME Lock-Up Rule”).

The revisions to the SME Lock-Up Rule pertain to the following:

- The Applicant Company shall cause its existing non-public stockholders and their related parties to refrain from selling, assigning, encumbering or in any manner disposing of their shares for a period of one year after the listing of such shares. All other stockholders shall not be subject to mandatory lock-up under this provision.
- Non-public stockholders mean the applicant company's:
 - Principal stockholders (*i.e.*, the owner of ten percent (10%) or more of the issued and outstanding shares);
 - Subsidiaries or affiliates;
 - Directors;
 - Principal officers; and
 - Any other person who has substantial influence on how the applicant company is being managed.
- Related parties mean the non-public stockholders':
 - Principal stockholders (*i.e.*, the owner of ten percent (10%) or more of the issued and outstanding shares)
 - Subsidiaries or affiliates;
 - Directors;
 - Principal officers; and
 - Members of the immediate families sharing the same household of any of its principal stockholders, directors or principal officers.

(PSE Memorandum CN No. 2020-80, dated 14 August 2020)

Free float

Minimum public ownership requirement for initial and backdoor listings

The SEC approved the PSE Guidelines on Minimum Public Ownership Requirement for Initial and Backdoor Listings. Here are their salient points:

1. A company applying for initial listing through an initial public offering (IPO) is required to have a minimum public offer size of 20% to 33% of its outstanding capital stock post-IPO, as follows:

Market Capitalization	Public Offer
Not exceeding PHP500m	33% or PHP50m, whichever is higher
Over PHP500m to PHP1b	25% or PHP100m, whichever is higher
Over PHP1b	20% or PHP250m, whichever is higher

The company must maintain a public ownership level of at least 20% at all times after initial listing

2. A company applying for listing by way of introduction is required to have at least 20% public float upon and after listing.
3. A company doing a backdoor listing is required to have at least 20% public float upon and after listing.

(PSE Memorandum CN No. 2020-76, dated 3 August 2020)

Delaying action

Suspending the reglementary periods during the MECQ from 4 to 18 August

The Insurance Commissioner declared the suspension of the following periods from 4 to 18 August 2020 and their resumption on 19 August 2020:

1. Reglementary periods for the filing of complaints, motions, pleadings, and other submissions before the Claims Adjudication Division (CAD) and Regulation, Enforcement and Prosecution Division (REPD); and
2. Periods for actions by the CAD and REPD with prescribed periods.

(IC Circular Letter No. 2020-82, dated 4 August 2020)

Glossary

MECQ – Modified Enhanced Community Quarantine
PSE – Philippine Stock Exchange

Back to work

Supplemental guidelines on workplace prevention and control of COVID-19

The Department of Trade (DTI) and Industry and Department of Labor and Employment (DOLE) issued Supplemental Guidelines on Workplace Prevention and Control of COVID-19 which provide as follows:

1. The Supplemental Guidelines apply to all private establishments regardless of economic activity including those located inside special economic zones and areas under the jurisdiction of Investment Promotion Agencies.

2. Workplace Safety and Health

Employers are required to implement all necessary workplace safety and health programs, including the following COVID-related programs, at no cost to the employees.

- a. Increase physical and mental resilience
 - i. Employers shall provide their employees with psychosocial support, especially those presenting mental health concerns.
 - ii. Employers shall likewise promote work-life balance through proper scheduling of activities and workforce rotation.
 - iii. Company policies on prevention and control of COVID-19 should be aligned with minimum government standards and guidelines.

b. Reducing Transmission of COVID-19

The following minimum public health standards must be complied with in the workplace:

- i. Masks
 - Face masks must be worn at all times.
 - Medical grade masks are highly encouraged and should be properly disposed after use.
 - Masks with vents should not be used.
 - Cloth masks, with additional filter such as tissue paper or similar material, may be used as long as they are clean and washed daily. The filter should be changed daily or after every sneezing or coughing episode and should be properly disposed after use. Hands should be washed/disinfected before replacing the filters.

- Frequent mask handling and manipulation should be avoided.

ii. Face shields

- Face shields shall cover the entire face. If possible, face shields should extend to the ears and below the chin.
- Visor-type face shields shall not be allowed.
- Face shields and masks should always be worn together when interacting with colleagues, clients and visitors.
- Face shields may be removed according to the demands of the work or when occupational safety and health requires.

iii. Physical Distancing

- Physical distancing of at least one meter or two meters when possible shall be observed at all times. This must be practiced in combination with the wearing of masks and face shields.

iv. Frequent Disinfection

- Frequent handwashing with soap and water or the application of alcohol-based disinfectants shall be mandatory.

The following disinfecting/washing resources, supplies/materials should be made available to employees and clients/visitors:

- hand washing stations
- soap and sanitizers
- hand drying equipment or supplies

The foregoing supplies/materials should be placed in the following strategic locations in the workplace:

- Corridors or hallways
- Conference areas
- Elevators
- Stairways

- Points of entry
- Locker rooms
- Common areas
- Bathroom
- Canteen
- Personal workspace
- Company vehicles and shuttle services

Display of signages/visual cues and reminders to practice proper handwashing and other hygiene behaviors among employees is mandatory. These include:

- Hand washing with soap and water, or use of hand disinfectants with alcohol-based sanitizers specifically, but not limited to, the following instances:
 - Before and after handling food or eating
 - After using the bathroom
 - Before and after taking off their face mask and/or face shield
 - After touching frequently touched surfaces and objects
 - Before and after touching their face
 - Advising employees to conduct surface disinfection in their workstations before the start of the shift, intermittently during shift and at the end of the shift
 - Discouraging sharing of personal items between employees
- Employers classified as large and medium sized private establishments (*i.e.*, those with total assets above ₱15m) are enjoined to provide shuttle services to their employees.
- Minimum public health standards should be enforced in the shuttle services
 - Employees inside the vehicles should be required to avoid talking to each other, taking phone calls, eating and removing their masks and shields.
 - Signages of “No Talking,” “No Eating,” and “No Taking Phone Calls”

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DOTr – Department of Transportation

should likewise be displayed or posted on the conspicuous areas in the vehicle.

- All vehicle types, as long as not expressly prohibited by the DOTr through an issuance, may be used for shuttle services.

Adequate ventilation should be strictly enforced in the following:

- Inside the workplace
 - Natural air flow exchange is highly encouraged.
 - If possible, explore the installation of exhaust fans, installation of air filtration devices with High-Efficiency Particulate Air filters or recalibration of building heating, ventilation and air-conditioning systems.
- Inside the shuttle service
 - If possible, opening of windows with at least three inches of opening while in transit
 - Mandatory observance of physical distancing of at least one meter and wearing of face masks and face shields
 - Mandatory disinfection before and after each use of the vehicle

Mandatory advocacy awareness-raising programs

- The Occupational Safety and Health (OSH) Committee shall facilitate webinars, virtual lectures and trainings on COVID-19, its prevention and control, including best practices to be attended by all employees and management.
- Topics should include recommended best practices on minimum public health standards and frequent updates on

relevant information from the DOH, WHO and other reliable sources.

Designated smoking areas in the workplaces shall be provided with individual “booths.” Employers shall require employees to strictly observe physical distancing measures and other applicable health protocols.

c. Reduce Contact

- i. Most-at-risk population (e.g., senior citizens, pregnant women, individuals with underlying health conditions) and those below 21 years old shall continue to observe work-from-home arrangements. When needed to occasionally report to work, they may be allowed to, provided a certificate of fit to work is secured from the OSH personnel and must stay in the workplace only for a specified number of hours. They shall limit physical contact inside the premises.

ii. Restriction of mass gatherings:

- Depending on the risk classification of the workplace locality, as defined by IATF’s risk severity grading, Employers shall follow the restriction on mass gatherings, (i.e., only 10% of seating capacity for meeting rooms in high/moderate-risk areas (e.g., confined spaces) and a maximum of 50% seating capacity for low-risk areas (e.g., open areas)).
- Videoconferencing shall always be used for meetings needing large attendance of employees and/or for meetings lasting longer than 15 minutes.
- The safety officer, which refers to any employee or officer of the company trained by the DOLE and tasked by the employer to implement an occupational safety and health program, and ensure that it is in accordance with the provisions of OSH standards, will determine the maximum number of employees allowed to stay at any given time in areas where they usually converge during breaks, or before/after work shifts (e.g., canteens, locker rooms, changing rooms, lounges, rest rooms or comfort rooms). The safety officer shall ensure that minimum public health standards are followed at all times.

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DOH – Department of Health

DOTr – Department of Transportation

IATF – Inter-Agency Task Force

WHO – World Health Organization

- iii. Employers shall adopt staggered meal schedules to further restrict contact among its employees. Eating alone in the workstation is highly encouraged.

Dining in canteens may be allowed provided that employees shall strictly comply with the physical distancing of at least one meter and shall be prohibited from talking to each other. Employers are required to provide signages, physical barriers, and such other means to ensure compliance with these protocols.

To ensure compliance with the physical distancing requirements, employers may set up makeshift dining areas to complement canteens in the workplace.

- Masks should be immediately worn after eating.
- Use of communal items such as, but not limited to, dipping sauces and condiments, utensil dispensers, and straw dispensers shall be prohibited.
- Serving of buffet meals and other similar set-ups shall be prohibited.

- iv. Employers shall, as much as practicable, minimize the duration of customer transactions to less than 15 minutes.

d. Reduce duration of infection

i. Detection

Upon entering the building premises / workplaces, employees shall be required to accomplish the Health Declaration Form (see Annex A-1 of DTI-DOLE Joint Memorandum Circular 20-04-A), or any digital iteration thereof. The security staff or other responsible personnel shall immediately screen the accomplished form and perform a temperature check (see Annex B of DTI-DOLE Joint Memorandum Circular 20-04-A).

- If “Yes” to any item is answered or if with a $T > 37.5$ degrees Celsius, the employee shall be denied entry and referred to the workplace isolation area for further evaluation by the Safety Officer.
- If “No” to all items are answered and temperature is < 37.5 degrees Celsius, the employee shall be permitted entry.
- The security staff or other responsible personnel on duty shall immediately give

the accomplished health declaration form to the company Human Resources (HR) for appropriate action and storage.

- Should an online health declaration form be used, the form should be electronically submitted to HR.
- The Health Declaration Form shall be handled and processed in accordance with the Data Privacy Act and related issuances.

- ii. Employers shall direct symptomatic individuals through appropriate health system entry points such as the primary care facility (e.g., Barangay Health Center, Infirmary, Private Clinics / hospitals) or telehealth consultation. Referral networks shall be established

- iii. Employers may contact the Department of Health (DOH) through its hotline 1555 for guidance on the handling and referring symptomatic employees.

3. Management of asymptomatic and symptomatic employees in the workplace

a. Remote management of cases and close contacts

- i. Employers shall ensure that the employees, regardless of work arrangements, have access to telemedicine services, either through health maintenance organization (HMO), employer-initiated telemedicine services, or Barangay Health Center.

- ii. Large and medium private establishments are strongly encouraged to provide their own telemedicine services, in the absence of an HMO.

b. Isolation and referral

- i. Large and medium sized private establishments and establishments with multiple tenants are mandated to designate an isolation area of one room for every 200 employees, which shall be other than the company clinic, and must be situated near the entrance/s or in a nearby facility, for employees needing further assessment due to elevated temperature, presence of flu-like symptoms, any ‘Yes’ answer to the Health Declaration, or exposure history to a COVID-19 case or probable case thereof.

- ii. The designated isolation area shall have adequate ventilation and make available Personal Protective Equipment (PPEs) for the health personnel and symptomatic patients. The isolation area shall be provided with chairs and must have a dedicated restroom. It shall be disinfected once every two hours and/or immediately after any infected or confirmed COVID-19 employee leaves the area.
 - iii. Private establishments unable to establish an isolation area may make arrangements with a temporary treatment and monitoring facility nearby or with the Barangay for immediate referral of employees who fulfill the criteria for isolation.
 - iv. All individuals shall keep their face masks and face shields during isolation at all times
 - v. Isolation area personnel shall always wear the recommended PPEs prior to attending to the symptomatic employee, as prescribed in the DOH Department Memorandum (DM) No. 2020-0197, including disposable gown, face shield, medical grade mask and gloves. All used PPEs shall be properly disposed after every use.
 - vi. Company protocols for transporting the symptomatic employee/s to the nearest health facility, such as ambulance conduction and if necessary, for PCR testing shall be put in place (see Annex C of DTI-DOLE Joint Memorandum Circular No. 20-04-A).
 - vii. Malls and buildings shall have at least one isolation area near the entrances.
- c. Contact tracing
- i. Employers shall ensure strict compliance with protocols established by the DOH and LGUs for contact tracing of employees in close contact with a COVID-19 case.
 - ii. Close contacts shall be defined as employees with exposures two (2) days before or within 14 days from onset of symptoms of a suspect, confirmed or probable case. Exposure shall be any of the following:
 - Face-to-face contact with a confirmed case within one (1) meter and for more than 15 minutes, with or without a mask
 - Direct physical contact with a confirmed case; or
 - Direct care for a patient with probable or confirmed COVID-19 disease without using PPEs.
- iii. Contact Tracing among the Workforce
- Employers shall conduct contact tracing within their workplace to identify close contacts. Workplace CCTV may be used to determine close contacts.
 - Employers shall ensure that close contacts of employees whose RT-PCR test confirmed positive undergo a 14-day quarantine period.
 - During the 14-day quarantine, close contacts shall be required to regularly report to their employer any development, including new symptoms. Symptomatic employees should update their employer regarding their COVID-19 test results from a nationally accredited testing facility.
 - Close contacts who remain asymptomatic for 14 days may return to work without need for a test.
 - Employers shall make available work-from-home (WFH) arrangements for the close contacts when feasible.
- iv. Contact tracing of customers and visitors
- Customers, including visitors, entering private establishments/business premises shall be required to completely accomplish the Contact Tracing Form (see Annex A-2 of DTI-DOLE Joint Memorandum Circular No. 20-04-A)
 - Contact tracing forms shall be surrendered daily to the HR officer for future reference and safekeeping.
 - Employers shall explore the use of technology, such as by using contactless forms.
 - Contactless forms shall be handled with the highest degree of confidentiality and

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LGU – Local Government Unit

PCR – Polymerase Chain Reaction

RT-PCR – Reverse Transcription PCR

securely disposed of after thirty (30) days.

- Referral of symptomatic individuals shall be coordinated to the nearest health care facility as provided under the latest DOH interim guidelines (e.g., DOH Department Memorandum No. 2020-00334).

d. COVID-19 testing

- i. Employers are encouraged to collaborate with the national and/or local government testing efforts like drive-thru or walk-thru testing facilities.
- ii. Following the expanded testing strategy in DOH DM No. 2020-0258 and DOH DM No. 2020-0258-A, the priority workers under Section III.D.2 of DTI-DOLE Joint Memorandum Circular 20-04-A shall undergo RT-PCR test.
- iii. Testing of symptomatic and close contacts
 - All employees experiencing symptoms of COVID-19, and those who are close contacts must undergo RT-PCR testing. The LGUs having jurisdiction over the workplace and the residences of the symptomatic employees and close contacts should be informed before testing for monitoring purposes
 - Symptomatic employees with travel/exposure to COVID-19 shall undergo 14 days quarantine. Upon its completion and prior to resumption of work, the employee shall present a Certificate of Quarantine Completion from the step-down care facility or local health office, per Philippine Society for Microbiology and Infectious Disease (PSMID) Guidelines on Return-to-Work (see Annex E of DTI-DOLE Joint Memorandum Circular No. 20-04-A).
- iv. Testing of asymptomatic employees returning to work
 - RT-PCR or antibody-based tests is neither recommended nor required for

asymptomatic employees returning to work.

- Employees physically reporting to work shall be screened for COVID-19 symptoms, including fever, cough, colds and other respiratory symptoms, and/or determination of travel or exposure to COVID-19 cases within the last 14 days.
- Asymptomatic employees prior to physically returning to work may be cleared by the local health officer or OSH physician.

4. OSH Committees

- a. Employers shall establish OSH Committees in accordance with Republic Act No. 11058, its IRR, and DOLE Department Order No. 198.
- b. The OSH Committee and/or safety officer of the workplace shall oversee enforcement and monitoring of the minimum public health standards for COVID-19 prevention in the workplace and DTI-DOLE Joint Memorandum Circular No. 20-04-A.
- c. Monitoring by the OSH Committees shall include evaluation and analysis of the company's implementation of the minimum health standards and protocols to immediately address the spread of COVID-19 in the workplace, if any, and recommend and implement appropriate preventive measures. Health surveillance may be conducted to determine the cause/s of the spread/transmission of the virus in the workplace.
- d. For two or more private establishments housed under the same building, a joint OSH Committee shall also be established in accordance with DOLE Department Order No. 198-2018. They may share resources for a successful implementation of a comprehensive OSH Program, including a COVID-19 Prevention and Control Program.

5. Notification and reporting

- a. Reporting of COVID-19 test results to the DOH shall be done in accordance with DOH Administrative Order No. 2020-0013.
- b. Even before testing, the OSH Officer/employer must report COVID-19 positive employees, symptomatic employees, and their close contacts, to the local health office having jurisdiction over the workplace and the Barangay

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LGU – Local Government Unit

IRR – Implementing Rules and Regulation

RT-PCR – Reverse Transcription Polymerase Chain Reaction

Health Emergency Team (BHERT) of their place of residence, in accordance with DOH DM No. 2020-0189.

- c. The data privacy provisions under the Data Privacy Act and DOH DM No. 2020-0189 shall be strictly complied with.
- d. Reporting to the DOLE shall be made in accordance with Section X of the DTI-DOLE Interim Guidelines on Workplace Prevention and Control of COVID-19 using the Work Accident/Illness Report (WAIR) COVID-19 form (see Annex F of DTI-DOLE Joint Memorandum Circular No. 20-04-A).

6. Disinfection and closure of buildings/workplaces

- a. If one confirmed case of COVID-19 is detected in the workplace, the facility shall be disinfected with an appropriate disinfectant solution (0.5% bleach solution). The conduct of a comprehensive disinfection by specialists is recommended.

The building must be locked down for 24 hours prior to disinfection. During the disinfection process, all doors and windows should be opened. The building may only be opened 24 hours after the disinfection process.

- b. Case clustering shall be defined as two or more confirmed cases from the same area/ facility whether in the same/ different office spaces.
- c. Employers are encouraged to develop their own company policies on the temporary closure of the workplace, disinfection, and more extensive contact tracing, in the event of case clustering to ensure continuity of operations.
- d. Employers shall ensure that the temporary closure of their establishments for disinfection purposes be done in accordance with the National Task Force Against COVID-19 Memorandum Circular No. 2 dated 15 June 2020 on the Operational Guidelines on the Application of Zoning Containment Strategy in the Localization of the National Action Plan against COVID-19 Response.

- e. Individual businesses and offices, regardless of the community quarantine status in their respective areas, must abide by the directives/advice of their LGU/CESU/RESU on building closure due to case clustering.

7. Leave of absences and entitlements

- a. Use of leaves of absence and entitlements shall be governed by the pertinent rules and regulations promulgated by the DOLE.
- b. Hospitalization benefits of PhilHealth members shall be based on PhilHealth rules and regulations.
- c. Social Security Benefits shall be according to the policies and regulations of the Social Security System.
- d. Employee's Compensation Benefits shall be according to Presidential Decree No. 626 and its implementing rules and regulations.
- e. Employers are highly encouraged to provide sick leave benefits, medical insurance coverage, including supplemental pay allowance, for COVID-19 RT-PCR test- confirmed employees or close contacts made to undergo a 14-day quarantine

8. Compliance monitoring and enforcement

The DOLE, DTI and concerned LGU's Health and Sanitation Office shall strictly monitor compliance with this JMC through inspection and post-audit mechanisms.

In case of findings of non-compliance with DTI-DOLE Joint Memorandum Circular No. 20-04-A, the private establishment shall be temporarily closed until full compliance with the prescribed minimum health protocols.

(DTI-DOLE Joint Memorandum Circular 20-04-A, issued 15 August 2020)

Prescribed templates

Online uploading of quarterly reports on selected financial statistics

The Insurance Commissioner (IC) issued the following guidelines in the submission of the quarterly reports on selected financial statistics (QRSFS):

- The QRSFS shall be submitted in Microsoft Excel format using the revised templates in IC Circular Letter No. 2020-80 together with a company cover letter (in Portable Data Format) signed by a

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LGU – Local Government Unit

CESU – City Epidemiological and Surveillance Unit

RESU – Regional Epidemiology and Surveillance Unit

RT-PCR – Reverse Transcription Polymerase Chain Reaction

responsible officer with a rank of at least Vice-President attesting that the information therein are true and correct.

- All submissions including the cover letter shall be uploaded to the IC QRSFS System via the link: **<https://onlinesubmission.insurance.gov.ph/statat/login>**. All uploaded files must be encrypted and have the following file name format:
“Company(acronym)_LIFE_QRSFS_Q12020”
- Each company shall appoint two authorized representatives by submitting a registration form to the Statistics and Research Division through email at statinsurance.gov.ph on or before 7 August 2020. Upon approval, a username and password shall be provided.
- The IC QRSFS System shall be opened for ten working days prior to the deadline of submission and shall be closed at the end of business day of the deadline.
- Starting second quarter of 2020, the reports shall be submitted through email and to the system. All subsequent reports must then be encrypted and submitted only through the IC QRSFS System.
- In view of the effects caused by the pandemic, schedule of submission of reports shall follow the most recently published related IC Advisories. Otherwise, QRSFS reports shall be due every 20th day of the month following the end of every quarter.
- There will be a penalty of PHP5,000 for each day of delay in the submission of reports and PHP500 for every wrong data entry of material information. Any alterations on the prescribed templates and failure to conform to the above guidelines shall be considered as non-submission.

(IC Circular Letter No. 2020-80, dated 22 July 2020)



Talk to us

For further discussion on the contents of this issue of the **Client Advisory Letter**, please contact any of our partners.

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