



PwC Philippines' leaders among PICPA election winners

# Client Advisory Letter

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May-June 2021



# At a glance

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clarifications on selected topics

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# Taxes, compliance matters, assessments, and refunds

## Subsidiary action

Journals are not required to support a claim for input VAT refund

In a claim for refund of unutilized and excess input VAT attributable to VAT zero-rated sales, the Supreme Court affirmed that the submission of the subsidiary sales and subsidiary purchase journals is not indispensable to support such claim for refund. In this regard, Section 112(A) of the Tax Code, which enumerates the requisites for a refund claim, does not require said journals.

(G.R. No. 218057, promulgated 18 January 2021)

## Usurpation of power

Whether the BIR can void an ITH entitlement during a tax audit

A taxpayer registered with the Board of Investments (BOI) under the income tax holiday (ITH) regime was assessed by the Bureau of Internal Revenue (BIR) for deficiency income taxes under the 30% regular rate. According to the BIR, said BOI registration and ITH entitlement were automatically cancelled because the taxpayer misrepresented the start date of commercial operations and the veil of corporate fiction should be pierced.

However, the Court of Tax Appeals cancelled said deficiency tax assessment for lack of legal basis. Pursuant to Executive Order No. 226, the power to cancel or suspend the BOI registration of an enterprise is vested on the BOI, not on the BIR. Even in tax assessments, there is no law which grants such power to the BIR.

Hence, BIR's automatic cancellation of the BOI registration and ITH entitlement did not only encroach on the BOI's quasi-judicial or administrative adjudicatory power but also deprived the taxpayer of due process since it was not given an opportunity to be heard before its registration was cancelled and its ITH was voided.

(CTA Case No. 9643, promulgated 19 May 2021)

## Penalty situation

Implementing the penalty provisions for certain Tax Code violations

The BIR issued regulations to implement Sections 254, 264, 264-A, 264-B, and 265-A of the Tax Code, as amended by RA No. 10963 or the TRAIN Law. These provisions pertain to violations (and corresponding penalties) related to tax evasion, printing of receipts or invoices, electronic records of sale transactions, fuel test results and transmittal of data to the BIR electronic sales reporting system.

The regulations provide that the penalties for wilful attempt to evade or defeat any tax or payment thereof and for offenses related to fuel marking are in addition to those imposed by the Tax Code other relevant laws.

(Revenue Regulations No. 13-2021, published on 24 June 2021)

## Detailing CARS

Tax Payment Certificate issued by the DTI-BOI under the CARS Program

The BIR prescribed the following policies and guidelines on the utilization of Tax Payment Certificates (TPCs) issued by the Department of Trade and Industry-Board of Investment (DTI-BOI) which serve as evidence for fiscal support availment under the Comprehensive Automotive Resurgence Strategy (CARS) Program under Executive Order No. 182-2015:

- The regulations apply to Participating Car Makers (PCMs) and Participating Part Makers (PPMs) registered under the CARS Program and with TPCs.
- TPCs should be applied for before the statutory deadline for the payment of the covered taxes sought to be settled.

### Glossary

BIR – Bureau of Internal Revenue

RA – Republic Act

VAT – Value-added Tax

- All TPCs are non-transferable and shall be valid for 30 days from the date of issuance and can only be used once. The date on the TPC's face shall be the presumed date of issuance.
- The amount of the TPC should be indicated in the tax return as a deduction against the tax due. Further, the printed hard copies of the tax returns and the TPC should be submitted to the BIR.
- Eligible and registered participants under the CARS Program are not allowed to register their activity under any other program granting incentives.

(Revenue Regulations No. 12-2021, published 24 June 2021)

## FIST clenched

### BIR implementing rules and regulations of the FIST Act

The BIR has issued its own IRR of Republic Act (RA) No. 11523 or the FIST Act which cover the following:

- Registration and other tax compliance requirements of a Financial Institutions Strategic Transfer Corporation (FISTC)
- Entities created under RA No. 9182 or The Special Purpose Vehicle (SPV) Act of 2002 are qualified to avail of the privileges and incentives under the FIST Act.
- Tax exemptions:
  - Documentary stamp tax (DST) on any document evidencing the transfer or dation in payment
  - Capital gains tax on the transfer of land and/or buildings treated as capital assets
  - Creditable withholding income taxes on the transfer of land and/or buildings treated as ordinary assets
  - Value-added tax (VAT) on the transfer of non-performing assets (NPAs) or gross receipts tax. These tax exemptions shall apply only if the non-performing loans/real and other properties acquired (NPL/ROPA) have been issued Certificates of Eligibility (COE) and if the respective requirements under RR No. 11-2021 are complied with.
- Additional tax exemptions for an FISTC:
  - Income tax exemption of net interest income arising from new loans in excess of existing loans extended to a borrower with NPL acquired from an FI from 18 February 2021 to

18 February 2023 and which are solely for the purpose of rehabilitating the borrower's business;

- DST exemption of any document evidencing new loans mentioned in the exempt transactions; and
- DST exemption of any document evidencing an FISTC's capital infusion to the borrower's business with an NPL acquired from an FI from 18 February 2021 to 18 February 2023.

The above additional exemptions shall apply only for five (5) years from the date of acquisition of the borrower's NPL by the said FISTC.

- With respect to FIs, any loss incurred as a result of the transfer of an NPA from 18 February 2021 to 18 February 2023 shall be treated as an ordinary loss which may be carried over for five years.

Such net operating loss carry-over (NOLCO) shall be presented in the notes to the financial statements separately from NOLCO incurred for other taxable activities.

Tax savings arising from the NOLCO shall not be made available for dividend declaration but shall be retained as a form of capital build-up. The FI cannot enjoy this privilege if it is a party to a merger, consolidation, or combination with another person, unless the shareholders of the FI gain control of at least 75% or more in nominal value of the outstanding issued shares or paid-up capital of the surviving or new corporation.

If the MCIT applies despite the benefit of the NOLCO, the excess of the MCIT over the normal income tax due after NOLCO utilization shall no longer be considered as "tax savings" if it cannot be credited against normal income tax for any of the three immediately succeeding taxable years. The tax savings should be recognized in the books of accounts and disclosed in the financial statements.

### Glossary

BIR – Bureau of Internal Revenue

FI – Financial Institution

FIST - Financial Institutions Strategic Transfer

IRR – Implementing Rules and Regulations

MCIT – Minimum Corporate Income Tax

RR – Revenue Regulations

- The COE is sufficient proof of an NPL/ROPA being an NPA within the purview of the FIST Act and its IRR, without need of a prior BIR determination or ruling.

It also serves as sufficient proof that the sale/transfer from an FI to an FISTC or individual is in the nature of a “true sale.” If the COE does not contain a statement that the sale/transfer is a “true sale”, the Sworn Certification by the FIs containing such statement (submitted with the COE application) should be submitted to the BIR.

A COE is required to be presented to the BIR for every application or request for issuance of Electronic Certificate Authorizing Registration (eCAR) involving the transfer of NPAs.

Although a transfer of NPA from an FI to an FISTC without COE is allowed, it shall not be entitled to fiscal incentives under the FIST Act.

- Transfers of real property or shares of stock

Within 30 days after the issuance of a COE covering the transfer of real properties or shares of stock, a CGT return with the COE and other requirements shall be filed with the BIR.

- The FISTC shall submit the following as attachments to its Annual Income Tax Return:
  - a. List of taxable transactions;
  - b. List of tax-exempt transactions; and
  - c. List of partly tax-exempt and partly taxable transactions.
- Any person who benefits from the tax exemptions and privileges above, when such person is not entitled thereto, shall be liable to refund double the amount of tax exemptions and privileges availed plus 12% interest per annum, in addition to the penalties and sanctions under Section 24 of the FIST Act.

(Revenue Regulations No. 11-2021, published 24 June 2021)

## Glossary

BIR – Bureau of Internal Revenue

CGT – Capital Gains Tax

FI – Financial Institution

FIST - Financial Institutions Strategic Transfer

VAT – Value-Added Tax

## Pay first

### Excise tax on removal of sweetened beverages products for export

The BIR amended Revenue Regulations (RR) No. 20-2018 regarding sweetened beverages intended for export, as follows:

- The removal of sweetened beverages products intended for export shall already be subject to the payment of excise tax by the manufacturer on every removal from the place of production.
- After payment of the excise tax, the manufacturer has the following options:
  1. File a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the Tax Code; or
  2. Avail of a claim for product replenishment scheme in accordance with Section 6 of RR No. 3-2008 subject to certain terms and conditions.

The posting of a surety bond was removed from the terms and conditions.

- Failure to submit proof of exportation within the prescribed period shall be construed as non-exportation, hence, subject to applicable tax and penalties.

(Revenue Regulations No. 10-2021, published 18 June 2021)

## Border incident

### VAT-zero rated transactions that are already subject to the 12% VAT

The Commissioner of Internal Revenue announced that the conditions required under Sections 106(A)(2)(a) and 108(B) of the Tax Code have already been fully satisfied. Hence, the following transactions originally treated as VAT zero-rated under the Tax Code and the Cross Border Principle were declared as subject to the 12% VAT:

1. Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing, or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

2. Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed 70% of total annual production;
3. Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws;
4. Processing, manufacturing, or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for, in accordance with BSP rules and regulations; and
5. Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed 70% of total annual production.

The pertinent provisions of Revenue Regulations No. 16-2005, otherwise known as the Consolidated VAT Regulations of 2005, have also been amended accordingly.

**Note:** In light of the COVID-19 impact on the export industry, the Commissioner of Internal Revenue issued Revenue Regulations No. 15-2021 to defer the implementation of Revenue Regulations No. 9-2021 until the issuance of amendatory revenue regulations.

(Revenue Regulations No. 9-2021, published 12 June 2021)

## VAT threshold

### Implementing the VAT and percentage tax amendments under the CREATE Act

Considering the Tax Code amendments introduced by Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, Revenue Regulations (RR) No. 4-2021 (amending RR No. 16-2005) were amended as follows:

- The VAT-exempt threshold for the sale of house and lot and other residential dwellings under Section 109(P) of the Tax Code was adjusted to ~~PHP~~3,199,200 beginning 1 January 2021.
- The importation of COVID-19 related capital equipment, drugs, vaccines, medical devices, and raw materials under Section 109(BB) of the Tax Code shall not be subject to the issuance of an Authority to Release Imported Goods (ATRIG) and may be released by the Bureau of Customs without need of an ATRIG.

- Percentage taxpayers who overpaid taxes because of the decrease of the percentage tax rate from 3% to 1% starting 1 July 2020 until the effectivity of RR No. 4-2021 can claim a tax refund if they:
  - a. Shifted from non-VAT to VAT-registered status; or
  - b. Opted to avail the 8% income tax rate at the beginning of taxable year 2021.

(Revenue Regulations No. 8-2021, published 12 June 2021)

## Sin taxes

### Implementing the excise tax provisions on alcohol and tobacco products

The BIR issued implementing rules and regulations (IRR) regarding excise taxes on alcohol products, tobacco products, heated tobacco products and vapor products under the Tax Code, as amended by Republic Act Nos. 11346 and 11467.

Said IRR provides for the following:

- Definition of terms
- Revised tax rates, dates of effectivity and bases of computation
- Sample tax computations
- For tobacco, heated tobacco and vapor products, specific provisions regarding labels and packages, export and transfer bond, transshipment, inspection fee, information to be given and floor price
- Common provisions for alcohol products, and tobacco, heated tobacco and vapor products regarding tax classification, understatement of suggested net retail price, sworn statement on volume of sales and removals, supervision, common penalties and statutory offenses and penalties
- Offenses relating to stamps, labels, tags, and others
- Transitory provisions

(Revenue Regulations No. 7-2021, published 18 May 2021)

## Glossary

BIR – Bureau of Internal Revenue  
VAT – Value-Added Tax

## Prescriptive periods

### Suspending the statute of limitations for the right to assess and collect taxes

The Commissioner of Internal Revenue has supplemented Revenue Memorandum Circular No. 52-2021 regarding the suspension of the running of the statute of limitations on the BIR's right to assess and collect taxes.

In light of the expanded definition of the term "quarantine" which included both the enhance community quarantine (ECQ) and the modified ECQ (MECQ), the running of the statute of limitations shall be suspended in areas placed under ECQ and MECQ.

With the suspension, the BIR shall have additional days to enforce collection which is equivalent to the number of days which the area was placed under ECQ and MECQ, plus 60 days from lifting of such ECQ and MECQ.

(Revenue Memorandum Circular No. 80-2021, issued 29 June 2021)

## Treaty availment

### Clarifying the procedures under RMO No. 14-2021 regarding tax treaty benefits

The BIR addressed frequently asked questions regarding the availment of tax treaty benefits and clarified certain provisions of Revenue Memorandum Order (RMO) No. 14-2021. Here are the clarifications:

- To establish the fact of residency, the nonresident income recipient should submit a Tax Residency Certificate (TRC) duly issued by the tax authority of its country of residence.
- If the nonresident income recipient submitted to the income payor a TRC and the appropriate BIR Form No. 0901 prior to the income payment, said income payor may apply tax treaty provisions. However, all conditions for availment, other than residency, should have been satisfied. Otherwise, the regular Tax Code rates shall apply.
- If the income payor-withholding agent applies the tax treaty exemption or rate, it is required to file a Request for Confirmation.
- If the regular Tax Code rate was applied by the income payor-withholding agent, the non-resident income payee shall submit a tax treaty relief application (TTRA).

- One original and authenticated TRC shall be submitted to the income payor per year. However, a certified true copy may instead be submitted if the original is no longer available, provided, there is a notation as to whom the original was submitted.
- Annual updating is not mandatory for long-term contracts involving interests, royalties, and other income type where the condition for entitlement is not dependent on time threshold.

In such cases, the BIR will issue a one-time certification valid for the duration of the contract if there is no relevant and significant change in facts or circumstances.

- To prove that an item of income is not effectively connected with its permanent establishment (PE) in the Philippines, the foreign enterprise may submit the audited financial statements (FS) of the PE.
  - To prove that the interest rate imposed in a loan is at arm's length, the transfer pricing documentation (TPD) of the nonresident creditor should be submitted. If TPD is unavailable, the Transfer Pricing Policy for Intercompany Loans or equivalent transfer pricing study may be submitted.
  - For capital gains transactions, the BIR prefers the submission of audited interim FS. Alternatively, the unaudited interim FS and lapsing schedule may be submitted.
  - In the submission of additional documents, an extension of up to a maximum of 30 days may be granted.
  - Taxpayers with pending Tax Treaty Relief Applications (TTRAs) prior to the effectivity of RMO No. 14-2021 will still receive Final Notices to Submit Additional Documents and will have three months from receipt thereof to comply.
- On the other hand, taxpayers who have been notified of archival will no longer receive said Final Notice but may submit the requirements within four months from effectivity of RMO No. 14-2021.
- For TTRAs involving interests, dividends and royalties filed before the effectivity of RMO No. 8-2017, a Compliance Check Report may be issued.

### Glossary

BIR – Bureau of Internal Revenue



- For income payments in 2020 and prior years without filed TTRAs or Certificate of Residence for Tax Treaty Relief Forms, the withholding agent has until the last working day of 2021 to file a request for confirmation with complete documentary requirements.
- For dividends, the certified true copy of the audited FS as of the taxable year immediately preceding the date of declaration, which audited FS was duly filed with the BIR and the Securities and Exchange Commission should be submitted.

(Revenue Memorandum Circular No. 77-2021, issued 15 June 2021)

## Mathematical errors

### Corrections and clarifications regarding Revenue Regulations No. 5-2021

The BIR corrected computational errors in the illustrative examples under Sections 3(B) and 3(D) of Revenue Regulations No. 5-2021 which implements the new income tax rates introduced by the CREATE Act.

Hence, "TAX DUE" in Section 3(B) was changed from "1,000,000.00" to "100,000.00". On the other hand, "Gross Income" in Section 3(D) was changed from "558,500,000.00" to "58,500,000.00".

The BIR also clarified that the 1% income tax rate for Proprietary Educational Institutions is effective only from 1 July 2020 to 30 June 2023 while the 1% MCIT for Regional Operating Headquarters is effective only from 1 January 2022 to 30 June 2023.

(Revenue Memorandum Circular No. 76-2021, issued 15 June 2021)

## Fill in correctly

### Use of BIR Form No. 0605 for excise tax purposes

Revenue Memorandum Circular No. 97-2020 was amended in relation to the standard policy for using BIR Form No. 0605 for excise tax purposes. In this regard, BIR Form No. 0605 should be accomplished as follows:

- Excise taxpayers making advance payments for export products availing the Product Replenishment Scheme should tick the "Tax Deposit/Advance Payment" box under Field No. 17.
- Excise taxpayers under Non-Essential Services for Cosmetic Procedures should use BIR Form No. 2200-C.

- Excise taxpayers using BIR Form No. 0605 paying deficiency taxes should tick the "Preliminary/Final Assessment/Deficiency Tax" box under Field No. 17.
- Payments for administrative penalties must tick the "Others (Specify)" under Field No. 17 and indicate "Administrative Penalties" in the box provided.

All other excise tax payments in domestic removals of excisable articles shall use their corresponding excise tax returns (BIR Form No. 2200 series).

(Revenue Memorandum Circular No. 75-2021, issued 7 June 2021)

## Online registration

### Announcing the availability of the New Business Registration Portal

The Commissioner of Internal Revenue announced the availability of the New Business Registration (NewBizReg) Portal which is a gateway for the electronic submission of applications for registration through electronic mail (email).

Taxpayers who want to apply for registration must answer the Tax Type Questionnaire which will serve as a basis for tax registration officers in determining the tax types which the taxpayer will be liable for.

In case of changes or errors regarding tax type registration, the tax registration officers shall update the records and issue the Certificate of Registration.

(Revenue Memorandum Circular No. 73-2021, issued 3 June 2021)

## Alternative mode

### Filing of BIR Form No. 1702Q by eFPS taxpayers with FY accounting periods

Electronic Filing and Payment System (eFPS) taxpayers under fiscal-year (FY) accounting periods who cannot proceed in the filing of BIR Form No. 1702Q are advised to perform the following:

- File using BIR Form No. 1702Qv2008C in the Offline eBIRForms Package v.7.9.1 which can be downloaded from [www.bir.gov.ph](http://www.bir.gov.ph); and
- Pay the taxes due through the eFPS by filling out and e-Filing BIR Form No. 0605 and then

### Glossary

BIR – Bureau of Internal Revenue

MCIT – Minimum Corporate Income Tax



proceeding to e-Payment by using the following codes:

- Tax Type Code – IT (Income Tax); and
- Alphanumeric Tax Code (ATC) – MC 200 (Miscellaneous Tax).

(Revenue Memorandum Circular No. 68-2021, issued 28 May 2021)

## Overpaid taxes

### Issues regarding the temporary reduction of the percentage tax to 1%

The BIR issued the following clarifications regarding the temporary reduction of the percentage tax from 3% to 1% from 1 July 2020 to 30 June 2023 pursuant to the CREATE Act:

- The temporary reduction of the percentage tax applies to both corporate taxpayers and self-employed individuals whose gross sales or gross receipts do not exceed PHP3m. However, it does not apply to cooperatives, and individuals availing the 8% income tax rate.
- Taxpayers who already filed their Percentage Tax returns for the 3<sup>rd</sup> quarter of 2020, 4<sup>th</sup> quarter of 2020 and/or 1<sup>st</sup> quarter of 2021 using the 3% rate must amend said returns to reflect the 1% rate and corresponding overpaid taxes.
- Generally, taxpayers who have overpaid percentage taxes as a result of the retroactive application of the 1% rate to 1 July 2020 are precluded from claiming a refund thereof. They are only allowed to carry over the overpayment as credits against future percentage tax liabilities.

However, the following can claim a refund:

1. Taxpayers who shifted from non-VAT to VAT-registered status; or
  2. Taxpayers who opted to avail the 8% income tax rate at the beginning of taxable year 2021.
- Since BIR Form No. 2551Q does not include an option to carry over, the work-around for taxpayers who intend to carry over is as follows:

#### Glossary

BIR – Bureau of Internal Revenue  
VAT – Value-Added Tax

- a. Manual taxpayers should write the phrase “To be Carried Over” in BIR Form No. 2551Q.
- b. eFPS and eBIRForms filers should mark the option “To be Issued Tax Credit Certificate” in order to validate the return in the eFPS and eBIRForms facility. This presumes that the eFPS or eBIRForms taxpayer will carry over the overpaid percentage tax.

For manual and eBIRForms filers, on Line 17 of BIR Form No. 2551Q January 2018 (ENCS), they should specify the “Carry-Over Excess Percentage Tax (PT) Paid from Previous Quarter/s.”

For eFPS filers, on Line 20A of BIR Form No. 2551 February 2002 (ENCS), they should specify the “Carry-Over Excess Percentage Tax (PT) Paid from Previous Quarter/s.”

- The carry-over will be disallowed if the taxpayer did not amend the corresponding Percentage Tax return to reflect the overpayment.
- The withholding agent/government agency shall be responsible for refunding the overpaid taxes of individuals under a job order or service contract agreement with the government and who availed of substituted filing.
- If the whole amount of the 3% percentage tax has already been claimed as a deduction in computing income tax due for taxable year 2020, the overpayment cannot anymore be carried over or applied for tax refund.

(Revenue Memorandum Circular Nos. 67-2021 and 65-2021, issued 24 May 2021)

## Quarterly filing

### Availability of certain income tax returns in the eFPS and eBIRForms

BIR Form No. 1702Q January 2018 (ENCS), which already includes the reduced rates under the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, is already available in the Electronic Filing and Payment System (eFPS).

However, BIR Form No. 1702Qv2008C is not yet available in the Offline Electronic Bureau of Internal Revenue (eBIRForms) v7.9.1. Nevertheless, the 2008 version was modified to render Field No. 25B (Tax Rate) and Schedule 1 (Tax Rate) editable.

(Revenue Memorandum Circular No. 66-2021, issued 24 May 2021)

## Asset formula

### Clarifying certain income tax provisions of RR No. 5-2021

The BIR issued the following clarifications regarding some of the income tax provisions of Revenue Regulations (RR) No. 5-2021:

- In determining whether or not a taxpayer exceeded the PHP100m total asset threshold for purposes of applying the 20% income tax rate, total assets are understood to be net of depreciation and allowance for bad debts.
- The value of the land where the office, plant and equipment are situated, as reflected in the financial statements, shall be excluded from the computation of total assets. Land held primarily for sale or held for investment purposes shall not be excluded.
- If the office occupies only a portion of a building on land owned by the taxpayer, only the proportionate part multiplied by the value of the land shall be excluded.

(Revenue Memorandum Circular No. 62-2021, issued 17 May 2021)



# Latest on regulatory landscape

## Online lending

### Disclosure requirements on advertisements of FCs and LCs

The SEC is warning all financing companies (FCs) and lending companies (LCs) owning, operating, or utilizing online lending platforms to strictly comply with Memorandum Circular (MC) No. 19-2019 regarding Disclosure Requirements and Reporting of Online Lending Platforms.

FCs and LCs are reminded that the violations under Section 4 of MC No. 19-2019 are subject to a fine of not less than double the basic penalty (but not more than PHP1m) or a 60-day suspension of lending and financing activities. The SEC may also revoke the Certificate of Authority in case of continuous failure to comply.

(SEC Notice dated 22 June 2021)

## I-ACGR deadline

### Extended deadline for filing Integrated Annual Corporate Governance Reports

Publicly Listed Companies (PLCs) are required to submit their (I-ACGRs) on or before 30 May every year pursuant to SEC Memorandum Circular No. 15-2017.

However, in light of the COVID-19 pandemic, the deadline was extended to 30 June 2021 without need for application by PLCs.

(SEC Notice dated 25 May 2021)

## Annual Reports

### Extended deadline for submission of 2020 Annual and Q1 2021 Quarterly Reports

On 18 April 2021, the SEC issued Memorandum Circular No. 5-2021 extending the deadline for submitting Annual Reports for fiscal year ended 31 December 2021 to 17 May 2021.

In light of the BIR's extension of the deadline for submitting the required attachments to the Annual ITR to 30 May 2021, the SEC also extended the deadline for submitting Annual Reports for calendar year ended 31 December 2020 from 17 May 2021 to 1 June 2021. The deadline for submission Quarterly Reports for the period ended 31 March 2021 was also extended to 1 June 2021.

(SEC Notice dated 18 May 2021)

## Governance process

### Revised SEC guidelines on transactions involving CGFD-covered companies

Companies under the supervision of the Corporate Governance and Finance Department (CGFD) of the SEC are advised of the revised guidelines regarding the following:

- a. submission of documents;
- b. processing of online requests for issuance of Payment Assessment Form (PAF);
- c. monitoring;
- d. issuance of clearances; and
- e. payment of Annual Fees.

The revised guidelines provide for the following:

1. List of documents to be submitted via email in relation to the Online Submission Tool under SEC Memorandum Circular No. 3-2021, including the respective manner and venue of filing;
2. Requirements for submission of documents;
3. Processing of requests for issuance of PAFs to pay penalties and/or processing or filing fees;
4. Payment of Annual Fees; and
5. Request for monitoring and issuance of monitoring sheet/clearance

(SEC Notice dated 12 May 2021)

### Glossary

BIR – Bureau of Internal Revenue

ITR – Income Tax Return

SEC – Securities and Exchange Commission



## Contact details

### Extending the deadline for compliance with SEC MC No. 28-2020

The SEC extended the deadline to comply with SEC Memorandum Circular (MC) No. 28-2020 to 30 June 2021. SEC MC No. 28-2020 pertains to the creation and designation of email account addresses and mobile number for transactions with the SEC.

The required forms/notices may be filed via email submission to MC28\_S2020@sec.gov.ph. Filings beyond 30 June 2021 shall be subject to a PHP1,000 penalty.

(SEC Notice dated 7 May 2021)

## Manual of regulations

### Amending the MORB and MORNBFi pursuant to the FIST Act

In light of the Financial Institutions Strategic Transfer (FIST) Act and its IRR for BSP-Supervised Financial Institutions (BSFIs), the BSP amended Section 386 of the Manual of Regulations for Banks (MORB) and Sections 363-Q/307-N of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFi) to add a section entitled "Sale/Transfer and Investment Transactions of BSP-Supervised Financial Institutions (BSFIs) Pursuant to Republic Act No. 11523, Otherwise Known as the FIST Act."

The new section was also adopted under Sections 311-S/130-CC/322-P of the MORNBFi, although with some changes.

Lastly, Appendix 7 of the MORB and Appendix Q-3/P-7/N-1/S-2 of the MORNBFi were amended to include the Monthly Report on the Sale/Transfer and Investment Transactions of BSFIs under the FIST Act.

(BSP Circular No. 1117, dated 27 May 2021)

## Eligibility requirement

### How BSFIs can obtain a Certificate of Eligibility under the FIST Act

The Monetary Board approved the guidelines for BSP-Supervised Financial Institutions (BSFIs) in obtaining a Certificate of Eligibility (COE) under the Financial Institutions Strategic Transfer (FIST) Act. The guidelines providing for the following:

- The COE is issued by the BSP as to the eligibility of non-performing assets (NPAs), non-performing loans, and real and other properties acquired of

BSFIs for purposes of availing tax exemptions and privileges.

- Before filing a COE application, the BFSI should coordinate with the BSP its intention, plan to sell, or transfer its NPAs.
- BSFIs should submit, among others, a Master List of Eligible NPAs not earlier than 15 working days after quarter-ended reference date.
- Requirements that should accompany each COE application
- Amount of processing fees for each COE application

(BSP Memorandum No. M-2021-034, dated 4 June 2021)

## Penalty reimposition

### Penalties for failure to file compulsory notification and reportorial requirements

Pursuant to Republic Act No. 11494 or the Bayanihan to Recover as One Act (Bayanihan 2), the Insurance Commission (IC) issued Circular Letter (CL) No. 2020-93 to suspend the imposition of penalties for non-filing, late filing, and failure to comply with compulsory notification and other reportorial requirements during the community quarantine period.

In this regard, all compulsory notification and reportorial requirements that fell due on or before 31 December 2020 should be submitted to the IC on or before 30 June 2021. Otherwise, the penalty prescribed under Item No. VII, paragraph B of CL No. 2014-15 shall be imposed. Nevertheless, the penalty computation for late filing shall be reckoned from 30 June 2021.

(IC Circular Letter No. 2021-38, dated 28 May 2021)

## Incentive guidelines

### Implementing the Tax Incentives provisions of the Tax Code

Pursuant to Section 21 of Republic Act No. 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, the Secretary of Finance and Secretary of Trade and Industry jointly issued the IRR of Title XIII of the Tax Code.

### Glossary

BSP – Bangko Sentral ng Pilipinas

IRR – Implementing Rules and Regulations

SEC – Securities and Exchange Commission

The IRR provides for the following:

- The Fiscal Incentives and Review Board (FIRB), or the Investment Promotion Agencies (IPAs) under delegated authority from the FIRB shall grant incentives only to the extent of their approved registered project or activity under the Strategic Investment Priority Plan (SIPP).
- The 5% tax based on gross income earned shall not include fees and charges as defined under Section 131(l) and (g) of the Local Government Code of 1991.
- For export enterprises governed by special laws that do not provide for allocation, the 5% special corporate income tax (SCIT) shall be paid as follows: 3% to the National Government and 2% to the municipality or city where they are located.
- For purposes of computing the gross income subject to the 5% SCIT, only the following direct costs may be deducted:
  - a. Direct salaries, wages, and labor expenses
  - b. Production supervision salaries
  - c. Raw materials used in the manufacture of products
  - d. Goods in process
  - e. Finished goods
  - f. Supplies and fuels used in production
  - g. Depreciation of machinery, equipment and building/portion of the building directly and exclusively used in the rendition/production of registered activity
  - h. Rent and utility charges associated with building, equipment and warehouses, or handling of goods used directly and exclusively in the rendition/production of registered activity
  - i. Financing charges associated with fixed assets used directly and exclusively in the registered activity
  - j. Service supervision salaries
  - k. Direct materials and supplies used
- Enhanced deductions
  - a. For purposes of the additional depreciation on training expense, the following are not eligible:
    - 1. Onboarding workshops
    - 2. Teambuilding activities, field trips and tours
    - 3. Executive education and leadership programs
    - 4. Professional and legal trainings such as sexual harassment, discrimination, and fraud
    - 5. Safety trainings such as evacuation plans, fire drills, workplace violence and first aid, except those that are directly related to the performance of core job functions and part of a technical training program
    - 6. Quality trainings such as ISO processes and standards that are not related to the performance of an employee's core job functions
  - b. For the duty exemption of imported capital equipment, raw materials, spare parts, and accessories that are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices, the Certificate of Authority to Import/Admission Entry shall be used to satisfy this condition for a period of one year from the issuance of the IRR.
- Excess input VAT attributable to VAT zero-rated sales by VAT-registered registered business enterprises may be applied for refund or tax credit.
- The direct and exclusive use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services, and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out.
- COVID-19 vaccine importations shall be exempt from duties, taxes, and other fees if they are not intended for resale or other commercial use and shall be distributed without consideration from persons to be vaccinated.
- A qualified expansion, entirely new project, or existing registered projects or activities prior to the effectivity of CREATE Act may avail of the incentives.

## Glossary

IRR – Implementing Rules and Regulations

ISO – International Organization for Standardization

VAT – Value-Added Tax

- A qualified expansion project is defined as a project of an existing enterprise that would involve the installation of additional facilities or equipment, or infusion of additional investment that will increase capacity of the same or similar activity within the same existing plant or facilities of the enterprise, and additional benefits to the economy.
- After the expiration of the transitory period under Section 311(C) of the Tax Code, export enterprises registered prior to CREATE Act may re-apply and avail of the incentives under the CREATE Act for the same period, *i.e.*, income tax holiday (ITH) of 4 to 7 years and 5% SCIT or Enhanced Deductions for 10 years.
- Criteria for Investment Priority Determination in the Strategic Investment Priority Plan
- The power to grant tax incentives is a function of the FIRB. However, if the investment capital does not exceed ₱1bn, the FIRB shall delegate such power to the concerned IPA.
- Splitting of the total amount of investment capital by breaking up the projects or activities into smaller projects or activities, for the purpose of evading or circumventing the jurisdiction of the FIRB to approve, shall not be allowed.
- The concerned IPA shall have exclusive jurisdiction to register all projects or activities regardless of the amount of investment capital.
- Decisions of the concerned IPA on tax incentive applications shall be final and immediately executory.
- The President may, in the interest of national economic development and upon FIRB recommendation, modify the mix, period or manner of availment of tax incentives. However, the total period of incentive availment that may be granted shall not exceed 40 years. In such case, the ITH cannot exceed 8 years. For the remaining period, the 5% SCIT may be granted.

(Implementing Rules and Regulations of Title XIII of RA No. 8424, as amended by RA No. 11534 or CREATE Act, issued by the Secretary of Finance and Secretary of Trade and Industry)

## Amnesty extension

### Extending the effectivity of the estate tax amnesty to 14 June 2023

The President approved Republic Act (RA) No. 11569 which amends RA No. 11213 by extending the deadline for availing estate tax amnesty from 15 June 2021 to 14 June 2023. The Secretary of Finance, in coordination with the Commissioner of Internal Revenue, shall issue the necessary IRR within 60 days from the effectivity of RA No. 11569.

(Republic Act No. 11569, approved 30 June 2021)

## Rice and pork

### Temporary modification of duty rates on imported rice and pork

The President declared the urgent need to temporarily reduce the Most Favored Nation (MFN) tariff rates on rice imports, to augment rice supply and to maintain affordable prices. For this purpose, he temporarily reduced the MFN rates of duty for the following imported rice:

- Rice in the husk (paddy or rough)
- Husked (brown) rice
- Semi-milled or wholly milled rice
- Broken rice

The President also temporarily reduced, on a staggered basis, the MFN tariff rates on the importations of fresh, chilled, or frozen meat of swine in order to address the pork supply shortage and stabilize prices of pork.

The above temporary reductions of MFN tariff rates are effective only for one year counted from the effectivity of Executive Order Nos. 135 and 134, respectively.

(Executive Order Nos. 135 and 134, dated 15 May 2021)

## Glossary

IRR – Implementing Rules and Regulations



# Meet us

**PwC ranked Global #1 M&A Advisor by Volume for 2020 by Dealogic, Thomson Reuters and Bloomberg**



Mergermarket had us ranked #2 in their glossy report, though we are also #1 for Mergermarket in their latest live rankings for 2020.

PwC also ranked top in various sub-categories either regionally (Europe, Middle-East & Africa and Asia-Pac) and for several individual territories.

## Next CREATE stop: Alex Cabrera at EO meet



PwC Philippines Chairman and Senior Partner Alex Cabrera continued his briefings on the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE Act) organized this time by the Entrepreneurs' Organization (EO) on 4 May 2021.

Included in his presentation are the vetoed provisions of the law. He also discussed the impact of CREATE on entrepreneurs.

In the open forum, Alex answered questions on corporate income taxes, VAT importation and incentives. He also gave his personal take on the effects of the law on foreign investments and the government's collection effort.

The one-and-a-half-hour Zoom event was attended by 90 participants composed of members, invited guests and partners.

Alex is a regular guest speaker at EO's events.

EO is a global, peer-to-peer network of more than 14,000+ influential business owners with 198 chapters in 61 countries. Founded in 1987, EO is the catalyst that enables leading entrepreneurs to learn and grow, leading to greater success in business and beyond.

## Alex Cabrera briefs life insurer on CREATE and estate tax

PwC Philippines Chairman and Senior Partner Alex Cabrera was a guest speaker in the 20 May webinar “Looking to the Future: Estate Planning and Wealth Succession in Post Pandemic Asia” sponsored by BDO Private Bank for its client, Manulife.



He discussed the effects of the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE Act) on estate tax and shared tips on real estate tax planning by giving real-life scenarios and related Supreme Court cases.

Hosted by Michelle Ong of the ABS-CBN News Channel, the two-hour event also featured his co-speakers, namely Juan Sabino Lizares (SVP and Senior Relationship Manager, Wealth Management Group, BDO Private Bank) and Tang Hang Wu (Professor, School of Law, Singapore Management University). BDO Private Bank President Albert S. Yeo gave the welcome remarks.

During the open forum, Alex answered questions on donor's tax, one-person corporation and trust. The speakers were also asked about their personal opinions on inheritance.

## PwC Philippines' leaders among PICPA election winners



(From left: Carla Theresa V. Tanieca, Rose Dale M. Ando, Paul Chester U. See, Geraldine H. Apostol)

Two partners, a director and a manager won in the Philippine Institute of Certified Public Accountants' (PICPA) Annual National Elections for fiscal year 2021-2022.

- Geraldine H. Apostol won as Regional Director for Metro Manila. Gett, who ranked first among the candidates for the position, is the Risk Assurance-Internal Audit Lead Partner at Isla Lipana & Co.
- Paul Chester U. See won as Regional Sectoral Representative for Public Practice, Metro Manila Region. He also ranked first among the candidates for the position. Paul is an Assurance Partner at Isla Lipana & Co., as well as the general manager at PricewaterhouseCoopers Business Services Philippines Co., Ltd. (Both entities are member firms of the PwC network.)
- Rose Dale M. Ando won as an Officer at the Cebu Chapter, Eastern Visayas Region. Dale is an Assurance Director at the Cebu office of Isla Lipana & Co.
- Carla Theresa V. Tanieca won as an Officer at the Eastern Chapter, Metro Manila Region. Carla is the Finance Manager at PricewaterhouseCoopers Business Services Philippines Co., Ltd.

The elections were held on 17 May. Congratulations to the winners!

## Alex Cabrera zeroes in on environmental goals when returning to the office



In the BusinessWorld Insights webinar "Should We Return to the Office? A Conversation on the Future of Work" organized by *BusinessWorld* in partnership with KMC Solutions, PwC Philippines Chairman and Senior Partner Alex Cabrera focused on the environmental factors that shape the future of work.

He joined the panel composed of *BusinessWorld* columnist Bienvenido "Nonoy" Oplas Jr., Mondelez Philippines' People Lead Aileen Aumentado, and KMC Solutions Chief Operating Officer Tracy Ignacio. *BusinessWorld* Multimedia Reporter Patricia Mirasol hosted the event held on 25 May.

The panel tackled the impact of the pandemic on the work setup, the future of work, inspiring and assuring people about going back to the office, how to help people stay productive and engaged while working remotely for the long term, and how the new physical workplace might be changed after the pandemic.

On the factors that will influence the future of work, Alex discussed PwC's Net Zero commitment, *i.e.* a worldwide science-based commitment to reach net zero greenhouse gas emissions by 2030. PwC is working on switching to 100% renewable electricity in all territories, improving energy efficiency in its offices, halving the emissions associated with business travel and accommodation (which accounted for 85% of PwC's carbon footprint), and investing in carbon removal projects, including natural climate solutions.

## PwC Philippines' Faye Reyes among outstanding US CPA Exam performers



PwC Philippines congratulates Assurance Senior Associate Hannah Faye Krystle Reyes not only for passing the US CPA Exam, but for being recognized by the American Institute of CPAs (AICPA\*) as one of the 89 winners of the 2020 Elijah Watt Sells Award\*\*.

To qualify for the award, CPA candidates have to obtain a cumulative average score above 95.50 across all four sections of the Uniform CPA Examination, pass all four sections on first attempt and complete the testing in 2020. Nearly 75,000 individuals sat for the US CPA Exam in 2020.

Faye has been on an international assignment at PwC US in New York, New York since 7 October 2019.

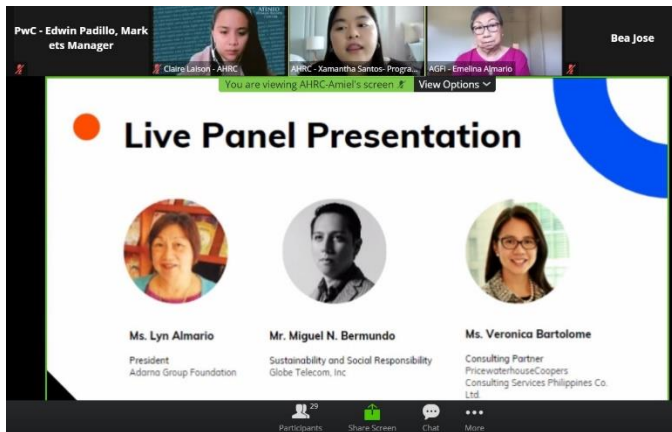
She graduated from De La Salle University-Lipa in 2015 with a BSA degree, then started her career at PwC Philippines in the same year as an Audit Associate. Around mid-2016 to October 2018, she served as a college instructor at her alma mater.

\* The American Institute of CPAs (AICPA) is the world's largest member association representing the CPA profession, with more than 431,000 members in the United States and worldwide, and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education and consulting. The AICPA sets ethical standards for its members and U.S. auditing standards for private companies, nonprofit organizations, and federal, state and local governments. It develops and grades the Uniform CPA Examination, offers specialized credentials, builds the pipeline of future talent and drives professional competency development to advance the vitality, relevance and quality of the profession.

\*\* The Elijah Watt Sells Award program was established by the AICPA in 1923 to recognize outstanding performance on the CPA Exam. Sells, one of the first CPAs in the U.S., was active in the establishment of the AICPA and played a key role advancing professional education within the profession.



## Veronica Bartolome speaks on children's rights at online training for business sector



PwC Philippines Consulting Partner Veronica Bartolome was a panel speaker for the live session “The CRBP 10 in Practice – A Business Panel” on 28 May as part of the Children’s Rights and Business Principles (CRBP) Online Training Seminar for the business sector.

Conducted by the Ateneo Human Rights Center (AHRC), the seminar aims to build the capacity of the top management of business enterprises on CRBP, especially in the context of a pandemic and the use of the online digital business platform.

Veronica gave a 15-minute presentation on the role of the private sector in providing assistance, platform, and programs for children to continue their access to education, especially during the pandemic. To illustrate, she talked about the firm’s Corporate Responsibility projects that align with the CRBP, including Isla Lipana & Co. Foundation’s flagship program on education (The Seat of Hope) and the scholarship program.

In the past, she led the firm’s team in localizing the CRBP module and providing training to the Ayala and MVP groups of companies.

Her co-panelists are from the Adarna Group Foundation, Globe Telecom, Save the Children Philippines, and Cebu Pacific. Participants are officers and staff from the policy, risk management, human resources, CSR and sustainability departments of various companies.

The AHRC is an academic-based non-government organization in the Philippines, and is attached to the Ateneo de Manila University School of Law. The AHRC has undertaken several initiatives to raise awareness and to advocate for the adoption of the CRBP by the business sector.

## 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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## **Request for copies**

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