

PwC Philippines, IACADEMY wrap up its first online Accounting Triathlon

Client Advisory Letter

In denial ^{p4} | Royalty treatment ^{p4} |
System requirements ^{p5} | FIST Act ^{p10}

February 2021



At a glance

Updates, reiterations, and clarifications on selected topics

Taxes, compliance matters, assessments, and refunds..... 4

Inclusive list 4

In denial 4

Royalty treatment..... 5

System requirements 5

Compromising situations..... 6

Excise tax returns 6

DST exemption 6

Online activities..... 7

Random test 7

Latest on regulatory landscape..... 8

Call of duties 8

Tender offers 8

Filing option 8

Tour guides..... 9

Facilitation fees 9

Online transactions 9

FIST Act..... 10

AMLA updates 10

What ESG is and why it matters

by: Paul Chester U. See

We have seen crucial changes in our world to date. The COVID-19 pandemic-induced lockdown alone had an immediate and negative impact on business activities. A Philippine enterprise survey conducted by the Asian Development Bank (ADB) from 28 April to 15 May 2020 shows that two-thirds of businesses closed temporarily, while 29% reduced operations.

As the effects of the pandemic and climate crisis become increasingly clear, businesses need to adapt with new strategies to help them continue to succeed. Companies must recognize the need to reorient strategic directions in these challenging times to protect their profitability and enhance business reputation.

Focus on ESG factors

Forward-thinking businesses identify sustainable opportunities that will benefit them in the long run. They seize related opportunities to innovate and reduce costs. This leads to a more comprehensive focus on the Environmental, Social and Governance (ESG) factors in assessing the sustainability of business operations. Companies integrate these factors into their business strategies to mitigate unprecedented risks.

For many, the term “ESG” suggests environmental issues like climate change and resource scarcity. While these are elements of ESG, the term means much more. How a business consumes energy, interacts with natural resources, and handles its waste are main factors in accounting for its environmental footprint. Social impact includes a company’s interface with the community and other institutions, how it conducts business in a broader social context, and even its labor relations. The final component, a company’s governance, includes its internal culture and ethics, whether it adheres to the laws and regulations, promotes diversity, and considers all stakeholders in the decision-making process.

What ESG is and why it matters

by: Paul Chester U. See



Initially, the ESG factors were only used by investors to determine potential investments. Nowadays, ESG gains more recognition among investors because it raises public awareness on the environmental and social influence of companies. Investors want to know that a company is creating long-term value. They are looking for businesses that have sustainable paths and a sustainable strategy that considers these factors. In fact, sustainability itself will become a license to operate for most businesses.

ESG and regulatory reporting

Majority of the large publicly traded companies overseas publish reports about their ESG initiatives. Locally, public companies need to comply with the Philippine Securities and Exchange Commission's (SEC) Sustainability Reporting Guidelines for Publicly Listed Companies through SEC Memorandum Circular No. 4, series of 2019, which outlines information that covered companies will have to disclose in relation to their non-financial performance across the economic, environmental and social aspects of their businesses. SEC requires, on a "comply or explain" basis, publicly listed companies to submit sustainability reports starting 2020, as part of efforts to help them assess and manage their economic, environmental and social impacts.

Still, some companies have not dedicated significant attention to how ESG factors might impact their businesses. They avoid the extra work in adapting to the realities of ESG but little do they know that its benefits far outweigh its costs.

How ESG works for businesses

Take, for example, a logistics company in Canada. Shipping and delivering goods are carbon intensive. By relying solely on traditional forms of energy, the company might lose its business due to inefficiencies, especially when oil prices are high. The company could be tagged as a carbon polluter and garner negative reactions from consumers. So, the company obtained

third-party advisory assistance to improve its sustainable practices and provide recommendations over the measurement and reporting of its fuel consumption data. With an effective ESG strategy, the company capitalized on electric vehicles and other alternative sources of fuel such as renewable energy sources that have become more readily available and cost efficient, rather than being overly dependent on oil products, to reduce its carbon footprint.

The company is also labor intensive. It faces the risks of labor shortages and disruptions due to the high demand of deliveries. So, the company invested in the development of new technology available in delivery drones. This investment then pays off as deliveries become faster and more efficient. With these innovations, the leaders must further govern its company from any possible violations that may occur in the future. It is therefore important to consider and identify any ESG-related risks and opportunities alongside the occurred changes. All this significant data and information should then be reflected in a cohesive and transparent report for investors' and stakeholders' review when evaluating the success of the new and innovative activities in which the company engages. Seeking external assurance support from experts to make necessary recommendations for improvements on report assessment will give additional comfort to investors and stakeholders.

Investors and business owners perceive ESG as a form of social responsibility - a broader obligation to society as they reinforce a more sustainable future for the world. Environmental, social and governance concerns may seem new to local business but this year proves that we need to embrace it now more than ever. ESG will continue to be essential even in the post-pandemic world as it amplifies a company's resiliency to unforeseen global or local crises.

Paul Chester U. See is a 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.

Taxes, compliance matters, assessments, and refunds

Inclusive list

Allowable deductions when computing the 5% GIT of PEZA-registered enterprises

For purposes of computing the 5% gross income tax (GIT) imposed by RA No. 7916 on PEZA-registered enterprises, RR No. 2-2005 provided an exclusive enumeration of deductible cost and expenses items considered as cost of sales or direct costs. By using the phrase “shall consist only of the following cost or expense items,” RR No. 2-2005 restricted the allowable deductions to said enumeration.

Subsequently, however, the BIR issued RR No. 11-2005 which removed the exclusivity of the enumeration. In this regard, the Supreme Court allowed the deduction of costs or expenses that were outside the enumeration. It reasoned that the enumeration in RR No. 11-2005 provided for mere examples or illustrations of the types of expenses that may be deducted from gross income to arrive at the 5% GIT.

Furthermore, the BIR would not have issued RR No. 11-2005 and deleted the phrase “shall consist only of the following cost or expense items” if it did not intend to remove the restriction on deductible costs. Lastly, the deletion of the restrictive phrase is consistent with Section 24 of RA No. 7916 which provides that costs and expenses directly related to the registered activity and are not administrative, marketing, selling and/or operating expenses or incidental losses shall be allowed as deductions.

(G.R. No. 225266, promulgated 16 November 2020)

Glossary

BIR – Bureau of Internal Revenue

CTA – Court of Tax Appeals

PEZA – Philippine Economic Zone Authority

RA – Republic Act

RR – Revenue Regulations

VAT – Value-added Tax

In denial

Whether the CTA can deny a partial refund granted by the BIR

A taxpayer filed an administrative claim for refund of unutilized input VAT amounting to PH₱20.08m. After review, the Bureau of Internal Revenue (BIR) granted a partial refund amounting to PH₱16.47m. Subsequently, the taxpayer filed a judicial claim with the CTA to appeal the denied portion amounting to PH₱3.61m.

In the CTA, the BIR filed a counterclaim seeking to deny the entire PH₱20.08m claim, including the PH₱16.47m that it (the BIR) had already granted. To avoid further costs, the taxpayer filed a Motion to Withdraw its judicial claim for refund of PH₱3.61m. The CTA granted the withdrawal and declared the BIR VAT Refund/Credit Notice as final and executory.

Although the BIR did not oppose the Motion to Withdraw, it filed a Motion for Reconsideration, arguing that the CTA should have resolved the merits of its counterclaim.

The CTA denied the BIR’s counterclaim, reasoning as follows:

- Under Section 112(C) of the Tax Code, only a full or partial denial of an input VAT refund is appealable to the CTA. Therefore, the CTA has no jurisdiction over questions surrounding the validity of an input VAT refund claim granted by the BIR.
- The immediate resort to a counterclaim to question the partial grant of refund violates the requirement to exhaust administrative remedies for deficiency tax assessments. Upon finding that its partial grant and payment of a VAT refund was improper, the BIR should have issued a deficiency VAT assessment instead of filing a compulsory counterclaim with the CTA.
- By filing a counterclaim, the BIR is attempting to collect a tax liability without a prior assessment. This violates the taxpayer’s right to due process since it deprives the latter of the rights and remedies available at the administrative level.

(CTA EB No. 2151, promulgated 21 January 2021)

Royalty treatment

Whether deriving royalties from Philippine sources constitutes doing business

A taxpayer claiming a VAT refund or credit under Section 108(B)(2) of the Tax Code should prove not only that the recipient of the service is a foreign corporation but also that the latter is doing business outside the Philippines.

In this regard, the Court of Tax Appeals held that if the taxpayer's client is a foreign corporation deriving royalty income from Philippine sources, the taxpayer-claimant must prove that notwithstanding that its client is earning royalties from the Philippines, it should still not be considered as doing business.

According to the CTA, unlike in the cases of Philippine citizens and resident aliens wherein the Tax Code categorizes royalties they earn as "passive income," the same is not true as regards royalties earned by foreign corporations. Hence, when a foreign corporation earns royalties from sources within the Philippines, it does not necessarily mean that such royalties should be treated as mere passive income so as to automatically classify such foreign corporation as not doing business in the Philippines.

(CTA Case No. 9904, promulgated 15 January 2021)

System requirements

Simplified guidelines on the use of CAS, CBA and/or its Components

The Commissioner of Internal Revenue issued new and simplified guidelines regarding taxpayers' use of Computerized Accounting System (CAS), Computerized Books of Accounts (CBA) and/or its Components, including Electronic Storage System (ESS), Middleware and Other Similar Systems.

The guidelines cover the following:

1. All Large Taxpayers who are mandated to maintain or use CAS;
2. All non-Large Taxpayers who opted to use CAS, CBA or components of CAS or CBA; and

Glossary

CTA – Court of Tax Appeals

CRM – Cash Register Machine

POS – Point-of-Sale

3. Taxpayers engaged in business who shall use an ESS, Middleware and Other Similar Systems.

Here are the policies and guidelines:

A. Registration of the System

- Submission of requirements to the Client Support Section of the Revenue District Office/Large Taxpayers Office (RDO/LTO)
- Strict compliance with the Standard Functional and Technical Requirements
- Manual or electronic mail submission
- An Acknowledgment Certificate (in lieu of the Permit to Use) shall be issued by the RDO/LTO within three working days from submission of complete requirements.
- Affiliated companies, sister companies, franchisees, closely held corporations, other similar companies shall register the System to be used, regardless of whether they are sharing servers and using the same System previously registered and used by the parent company or other related companies.
- No system demonstration or pre-evaluation shall be conducted as a condition for the registration of System.
- Taxpayers who will avail the services of Tax Service Providers (TSPs) or third-party software providers for the use of a system/software must register such with the BIR prior to the effectivity of their contract with the TSPs or third-party software provider.
- The registration of the CRMs/POS Machines and Other Sales Receipting System/Software is different from the registration of System.
- In case of minor system enhancements (e.g., user interface modification, bug fixes, performance improvements, etc.), the taxpayer must submit a written notification to the concerned RDO/LTO.

B. Use of Receipts/Invoices

- Taxpayers with duly registered System but without system-generated principal and/or supplementary receipts/invoices should apply for Authority to Print such receipts/invoices based on existing revenue issuances.

- In case of system downtime, taxpayers with duly registered System who are using computer-generated principal and/or supplementary receipts/invoices with system/software/application that has no redundancy or automatic switchover shall be allowed to issue manual principal and/or supplementary receipts/invoices.

C. Books of Accounts

- Taxpayers (Large and Non-Large) shall use books of accounts depending on its business requirements.
- The soft copy of the Computerized Books of Accounts and Other Accounting Records shall be registered with the RDO/LT Office where the Head Office/Branch is registered within thirty calendar days from the close of the taxable year.

(Revenue Memorandum Order No. 9-2021, issued 19 February 2021)

Compromising situations

Processing of applications for compromise settlement

Here are the new policies and procedures regarding the issuance by the Regional Offices of the Notice of Denial of applications for compromise settlement and the issuance by the National Evaluation Board (NEB) of the Authority to Cancel Assessment (ATCA) and Certificate of Approval of Applications:

1. All Notices of Denial resulting from deliberations by the Regional Evaluation Board shall be signed by the following:

Basic deficiency tax amount	Signatory
PHP500,000 or less	Regional Director
More than PHP500,000	Commissioner of Internal Revenue

2. All Certificates of Availment (CA) approved by the NEB, including cases subject of Judicial

Glossary

BIR – Bureau of Internal Revenue
 DST – Documentary Stamp Tax
 RMC – Revenue Memorandum Circular
 RR – Revenue Regulations

Compromise Agreement, shall be signed by the Assistance Commissioner, Collection Service. However, those involving Large Taxpayers shall be signed by the Assistant Commissioner, Large Taxpayers Service.

The CA and the case docket shall be returned to the concerned BIR office having jurisdiction which shall prepare the Notice of Lifting regarding issued Warrants and Notices and shall update the records of the taxpayer's liability in the General Control Ledger.

3. All ATCAs approved by the NEB shall be signed by the Regional Director or the Assistant Commissioner where the case originated.

(Revenue Memorandum Order No. 8-2021, issued 17 February 2021)

Excise tax returns

Availability of the newly revised BIR Form Nos. 2200-P and 2200-AN

The BIR issued the following newly revised tax returns:

1. BIR Form No. 2200-P (Excise Tax Return for Petroleum Products); and
2. BIR Form No. 2200-AN (Excise Tax Return for Automobiles and Non-Essential Goods)

The foregoing tax returns may be downloaded by manual filers from www.bir.gov.ph under the BIR Forms-Excise Tax Return Section.

However, they are not yet available in the Electronic Filing and Payment System (eFPS) and Electronic BIR Forms (eBIRForms) Package. Hence, eFPS and eBIRForms filers shall continue to use the versions in the eFPS and the offline eBIRForms Package v7.8.

(Revenue Memorandum Circular Nos. 28-2021 and 27-2021, issued 26 February 2021)

DST exemption

Requirements regarding DST-exempt qualified loans pursuant to RR No. 24-2020

Last year, RR No. 24-2020 was issued to implement Section 4(uu) of the Bayanihan to Recover as One Act¹ which grants DST exemption for loan term extensions or restructuring.

¹ Republic Act No. 11494.

In this regard, the BIR is requiring covered entities to submit, in hard and soft copies, a “Summary Listing of Pre-Existing Loans, Pledges and Other Instruments with Granted Extension of Payment and/or Maturity Periods as of September 15, 2020” to the concerned Revenue District Office/Large Taxpayers Office on or before 31 March 2021. The template of said Summary Listing is attached to RMC No. 22-2021.

Non-submission or late submission shall result in the imposition of the additional DST that would have been otherwise exempt under the Bayanihan to Recover as One Act.

(Revenue Memorandum Circular Nos. 26-2021 and 22-2021, issued 24 and 18 February 2021)

Online activities

Nationwide implementation of the online application for TCBP and TCVC

The Online Application for Tax Clearance for Bidding Purposes (TCBP) and Tax Compliance Verification Certificate (TCVC) is now available nationwide. Under this option, TCBP and TCVC applications shall be electronically submitted to etcbp@bir.gov.ph and etcvc@bir.gov.ph using the prescribed template for subject of email attached to RMC No. 24-2021.

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

Random test

Field testing guidelines under the Fuel Marking Program

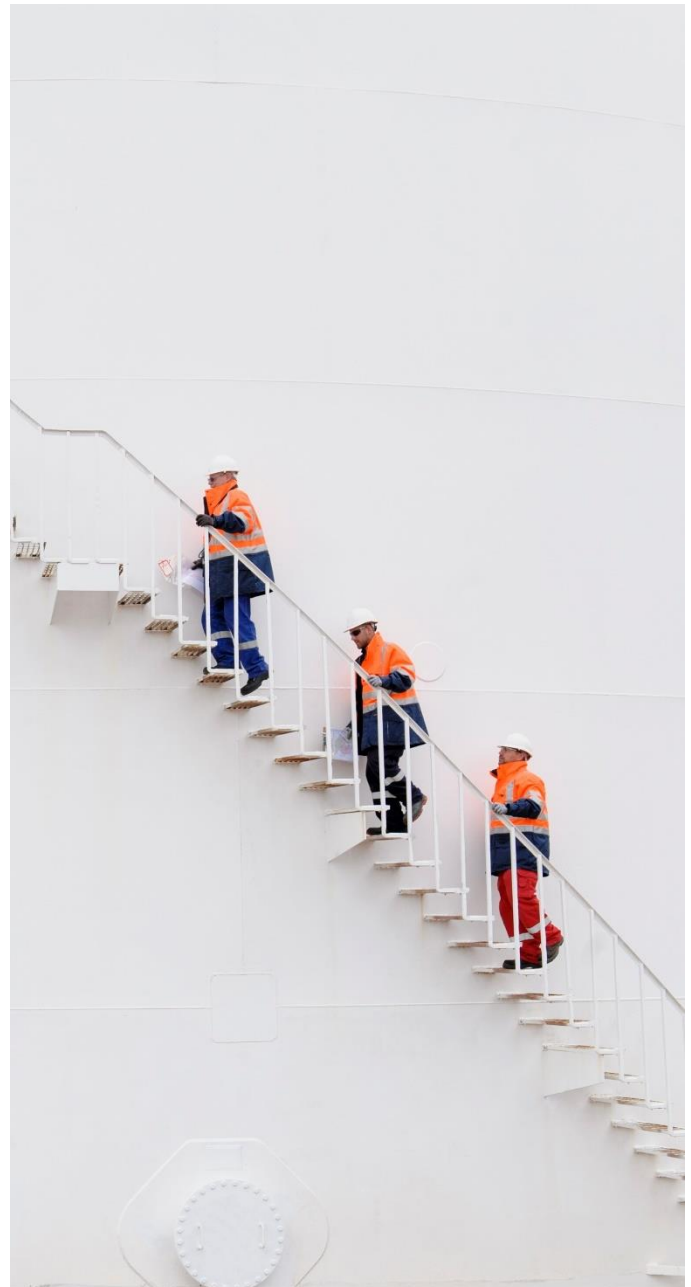
The Commissioner of Internal Revenue disseminated Joint Circular No. 1-2021 issued by the BIR and the BOC which prescribes the implementing guidelines for field testing under the Fuel Marking Program pursuant to the TRAIN Law.

The guidelines pertain to Random Field and Confirmatory Testing on gasoline, diesel and kerosene found in warehouses, storage tanks, gas stations and other retail outlets, and in such other properties or equipment, including mechanisms of transportation, of persons engaged in the sale, delivery, trading, transportation, distribution, or importation of fuel for

domestic market. Among others, the guidelines provide for the following:

- Creation of the Field Inspection Unit, a joint special task force composed of BIR and BOC personnel tasked to perform Field Testing activities
- Participants in the Field-Testing process and their respective responsibilities
- Field Testing procedure
- Confirmatory Test process
- Treatment of unmarked fuel, diluted marked fuel or containing counterfeit fuel marker
- Corrective measures for unmarked or diluted fuel
- Fines, penalties and offenses

(Revenue Memorandum Circular No. 21-2021, issued 16 February 2021)



Glossary

BIR – Bureau of Internal Revenue

BOC – Bureau of Customs

DST – Documentary Stamp Tax

RMC – Revenue Memorandum Circular

TRAIN – Tax Reform for Acceleration and Inclusion

Latest on regulatory landscape

Call of duties

Imposition of provisional safeguard duties on imported vehicles

Pursuant to the Secretary of Finance letter dated 27 January 2021 and Department of Trade and Industry Order dated 29 December 2020, the Bureau of Customs imposed provisional safeguard duties on imported vehicles in the form of a cash bond in the following amounts:

1. ~~PHP~~70,000 per four-wheeled passenger car designed to transport less than ten persons and not primarily to transport goods classified under ASEAN Harmonized Tariff Nomenclature (AHTN) Code 8703.
2. The following are excluded from the provisional duty:
 - a. Imported passenger cars that are completely knocked-down, semi knocked-down, used, with electric motors and those designed for a special purpose such as ambulances and hearses; and
 - b. Luxury passenger cars that have a Free On Board value of US\$25,000 or higher.
3. ~~PHP~~100,000 per imported light commercial vehicle (LCV) designed to carry both passenger and cargo that are classified under AHTN Codes 8704.21.19 and 8704.21.29.

The following are excluded from the provisional duty:

- a. Imported LCVs that are completely knocked-down, semi knocked-down, used, with electric motors and those designed for a special purpose such as ambulances and hearses; and
- b. LCVs that have a Free On Board value of US\$28,000 or higher.

The following should be noted with respect to the provisional safeguard duty:

- Its imposition shall be reckoned from the issuance of CMO No. 6-2021.

- It shall not form part of the landed cost used as basis for the value-added tax on the importation.
- It shall be deducted from the net importer's selling price and suggested retail price, for purposes of computing excise tax.
- Its imposition shall last for two hundred days from the issuance of CMO No. 6-2021.

(Customs Memorandum Order No. 6-2021, dated 1 February 2021)

Tender offers

Amended PSE Guidelines for Fairness Opinions and Valuation Reports

The SEC has approved the amendments to the PSE Guidelines for Fairness Opinions and Valuation Reports regarding the express inclusion of tender offers undertaken pursuant to delisting proceedings in the list of transactions where a fairness opinion and valuation report prepared by a duly registered and licensed independent valuation firm is required.

In this light, the following shall apply to tender offers for delisting purposes:

- Requirements in the PSE Guidelines for Fairness Opinions and Valuation Reports on contents of the fairness opinion and valuation report; and
- Criteria for determining the independence of the valuation provider.

(PSE Memorandum CN No. 2021-09, dated 19 February 2021)

Filing option

Online submission of the Beneficial Ownership Declaration Form

The Beneficial Ownership Transparency Declaration Form (BOTD Form) pursuant to Sections 6 and 7 of SEC Memorandum Circular No. 1-2021 can already be submitted online. The following steps should be observed:

1. Download the applicable BOTD Form from https://www.sec.gov.ph/2021form_botd_sec6/ and https://www.sec.gov.ph/2021form_botd_sec7/
2. Download the Consent Agreement Form from https://www.sec.gov.ph/2021botdf_consent-agreement-form/

Glossary

CMO – Customs Memorandum Order

PSE – Philippine Stock Exchange

SEC – Securities and Exchange Commission

3. Fill up the BOTD Forms and save as Portable Document Format (PDF)
4. Upload the accomplished forms and a valid government-issued identification card

The deadline for submitting the BOTD Form is 31 March 2021.

(SEC Notice, posted 23 February 2021)

Tour guides

Financial assistance for displaced workers in the tourism sector

The DOLE and DOT amended the 2020 Implementing Guidelines on Providing Financial Assistance and Cash-for-Work Program for Displaced Workers in the Tourism Sector pursuant to the Bayanihan to Recover as One Act. The amendments include the following:

- Additional beneficiaries of the Financial Assistance or Cash-for-Work Program:
 - Displaced Tourism Workers in LGU-Licensed Secondary Tourism Enterprises
 - Employees of affected establishments under the tourism sector that implemented Flexible Work Arrangements or Alternative Work Schemes
 - Displaced Tourism Support Service (TSS) Providers in Focused Tourism Destinations
 - Displaced Workers of TSS Enterprises in Focused Tourism Destinations
 - Displaced Members of TSS Associations in Focused Tourism Destinations

Focused Tourism Destinations refer to identified destinations or LGUs that are heavily dependent in tourism such as island destinations, or top tourism sites.

- Displaced Tourism Workers refer to those who became temporarily or permanently unemployed or

have lost their livelihood due to the COVID-19 pandemic.

- Displaced Tourism Workers are entitled to Financial Assistance notwithstanding any benefits they may have previously availed of under the following programs:

- DSWD Social Amelioration Program
- DOLE COVID-19 Adjustment Measures Program (CAMP) under the Bayanihan to Heal as One Act
- SSS Unemployment Benefits
- DOF Small Business Wage Subsidy (SBWS)

(DOLE-DOT Joint Memorandum Circular No. 2021-01, dated 3 February 2021)

Facilitation fees

Treatment of prepaid facilitation fees under bancassurance arrangements

Facilitation fees are payments for the promotional and marketing activities paid by an insurance company to a bank under a bancassurance arrangement. These fees are sometimes paid in advance.

According to the IC, facilitation fees paid in advance and booked as prepaid expenses by insurance companies shall not be treated as admitted assets of the latter in the determination of its financial condition, regardless of any stipulation of a claw back provision in a bancassurance arrangement.

This is pursuant to Section 203 of the Amended Insurance Code which provides that prepaid or deferred charges, among others, are not allowed as admitted assets of an insurance company.

(IC Circular Letter No. 2021-07, dated 28 January 2021)

Online transactions

Electronic submission of requests and reportorial requirements

All entities regulated by the IC and other Financial Institutions shall submit the following through the Online Submission Portal using the URL:

<https://onlinesubmission.insurance.gov.ph/isd/login>:

1. Report on Investments Made and Sold or Disposed of
2. Report on Derivative Transactions

Glossary

DOF – Department of Finance

DOLE – Department of Labor and Employment

DSWD – Department of Social Welfare and Development

IC – Insurance Commission

LGU – Local Government Unit

SSS – Social Security System

3. Statement of Capital, Reserves, and Surplus Investments
4. Report on Material Related Party Transactions
5. Statement of Rental Income
6. Report on Investments held under IMA
7. Request for Approval of Investments
8. Compliance with Security Deposit Requirements

These general requirements should be observed:

- The cover letter should be in Portable Document Format with the electronic signature of the company's authorized officer.
- Payment of fees and charges, if applicable
- Submission of specific documentary requirements in Section 5 of IC Circular Letter No. 6-2021

(IC Circular Letter No. 2021-06, dated 26 January 2021)

FIST Act

Enactment of the Financial Institutions Strategic Transfer (FIST) Act

The President approved Republic Act No. 11523 or the FIST Act which aims to ensure the resiliency of the Philippine financial industry against the COVID-19 pandemic.

The FIST Act allows the establishment of a Financial Institutions Strategic Transfer Corporation (FISTC) which should be organized as a stock corporation with a minimum authorized capital stock of PHP500m, a minimum subscribed capital stock of PHP125m and a minimum paid-up capital of PHP31.25m. However, a FISTC cannot be incorporated as a one-person corporation and must be at least 60% owned by Philippine nationals if it will acquire land.

A FISTC shall have the power to invest in or acquire non-performing assets (NPAs) of financial institutions (FIs); in case of non-performing loans (NPLs), to restructure debt, condone debt and undertake other restructuring related activities; and to issue equity or participation certificates or other forms of investment unit instruments for purposes of acquiring, managing, improving and disposing of NPAs acquired from an FI.

The transfer of NPAs from an FI to the FISTC and from a FISTC to a third party or dation in payment by the borrower or by a third party in favor of an FI or FISTC shall be exempt from the following taxes:

- a. documentary stamp taxes (DST) on transfer of NPAs and dation in payment;
- b. capital gains taxes on the transfer of lands and/or other assets classified as capital assets;
- c. creditable withholding taxes on the transfer of land and/or buildings classified as ordinary assets; and
- d. value-added tax on the transfer of NPAs or gross receipts tax, whichever is applicable.

A FISTC is exempt from income tax on net interest income, DST and mortgage registration fees on new loans in excess of existing loans extended to borrowers with NPLs acquired by the FISTC. It is also be exempt from DST in case of capital infusion to the borrower with NPLs.

With respect to FIs, any loss incurred as a result of the transfer of an NPA within two years from the effectivity of the FIST Act shall be treated as an ordinary loss which may be carried over for five years. However, tax savings arising from the net operating loss carry-over shall not be made available for dividend declaration but shall be retained as a form of capital build-up.

Applications for the registration of a FISTC shall be filed with the Securities and Exchange Commission within thirty-six (36) months from the effectivity of the FIST Act.

(Republic Act No. 11523, approved 16 February 2021)

AMLA updates

Amendments to the Anti-Money Laundering Act of 2001

Republic Act (RA) No. 9160, otherwise known as the Anti-Money Laundering Act of 2001, has been amended by RA No. 11521. The amendments include the following:

- The policy of the law includes cooperation in implementing targeted financial sanctions related to the financing of the proliferation of weapons of mass destruction, terrorism and financing terrorism.
- Targeted financial sanctions refer to asset freezing and prohibition pursuant to relevant UN Security Council resolutions and its designation processes.
- Covered persons include real estate developer and brokers, and offshore gaming operators including

Glossary

FI – Financial Institution

IC – Insurance Commission

IMA – Investment Management Agreement

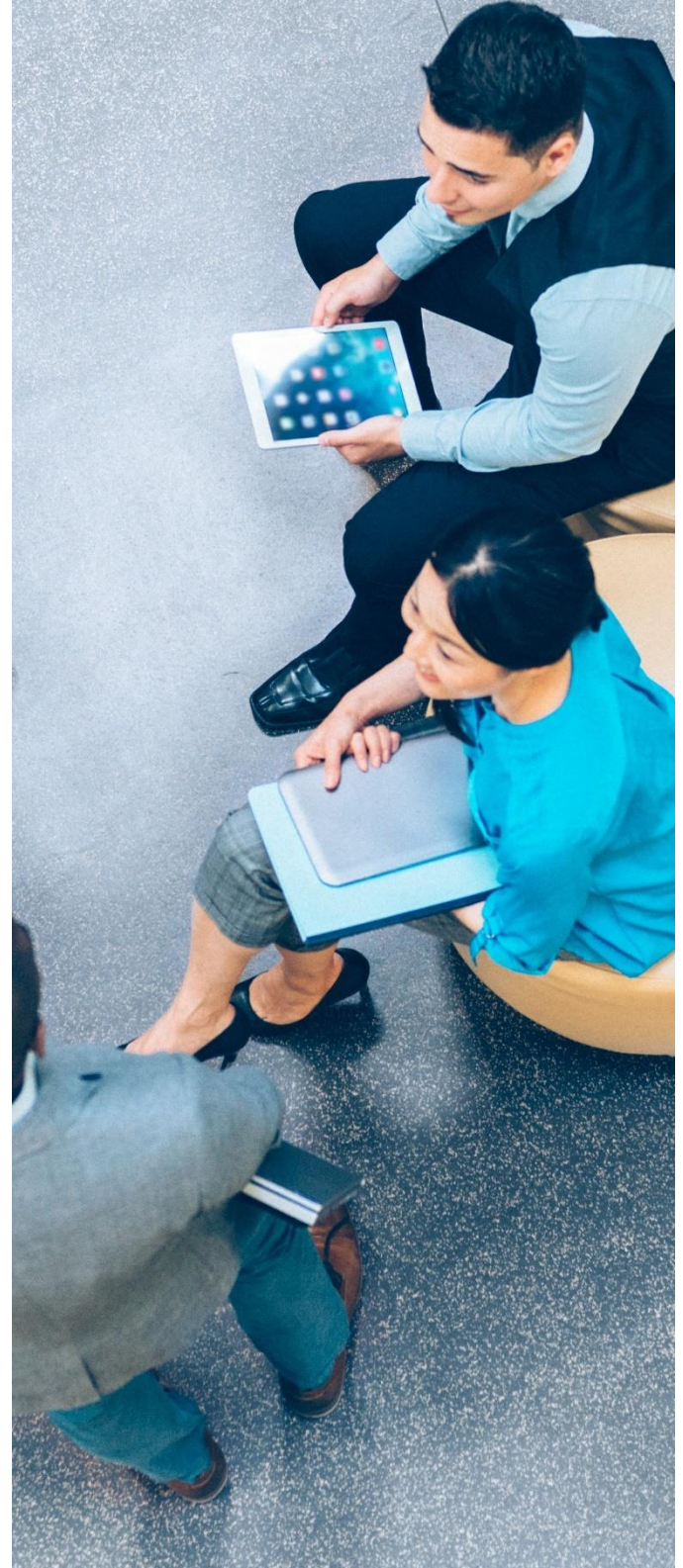
UN – United Nations

their service providers supervised, accredited or regulated by the PAGCOR.

- The following are included as covered transactions:
 1. A transaction in cash or other equivalent monetary instrument exceeding PHP5m within one banking day;
 2. A single casino cash transaction exceeding PHP5m or its equivalent in other currency; and
 3. A cash transaction with or involving real estate developers or brokers exceeding PHP7.5m or its equivalent in any other currency.
- Unlawful activity now includes:
 - Violations under the Securities and Regulations Code of 2000
 - Violations of the Strategic Trade Management Act
 - Violations of Section 254 of the Tax Code where the basic deficiency tax due is more than PHP25m per taxable year per tax type and there has been a finding of probable cause by a competent authority
- Additional functions of the AMLC
 - Investigate suspicious transactions and covered transactions deemed suspicious
 - Apply for the issuance of search and seizure order and subpoenas
 - Implement targeted financial sanctions
 - Preserve, manage or dispose assets pursuant to freeze orders, asset preservations orders and forfeiture judgments
- Freeze Order
 - The Court of Appeals may issue a freeze order upon *ex parte* petition by the AMLC and after determination of probable cause that a monetary instrument or property is related to an unlawful activity, as defined under the law. Only the Supreme Court may issue a temporary restraining order against a freeze order.

- To implement the targeted financial sanctions in relation to the proliferation of weapons of mass destruction, the AMLC has the power to issue, *ex parte*, an order to freeze without delay.

(Republic Act No. 11521, approved 29 January 2021)



Glossary

AMLC – Anti-Money Laundering Council
PAGCOR - Philippine Amusement and
Gaming Corporation

Meet us

Get to know the FIST Act through our videos



President Rodrigo R. Duterte signed on 16 February 2021 the Financial Institution Strategic Transfer (FIST) Act.

The FIST Act is one of the key legislative measures crafted by the government to cushion financial institutions from the lingering negative impacts of the pandemic and to prevent/resolve liquidity problems.

With FIST Act, it is hoped that the integrity and health of the financial system is preserved. Ultimately, a robust financial system will be key for the Philippines' rebound from its lackluster economic performance in 2020 and be poised for another period of economic growth.

Watch the [Part 1](#) and [Part 2](#) videos today. For more information, please contact [Vergel Pabillon](#) or [Gabriel Eroy](#).

PwC Philippines advises QPAX on joint venture with Quezon City government

Cabrera and Company, a PwC member firm, is the legal advisor of QPAX Traffic Systems Inc. for its partnership with the Quezon City government in implementing a 'no contact' apprehension system in the city.

The firm advised QPAX on the legal structure of its proposed joint venture (JV), and provided legal support to QPAX from the commencement of the Swiss

Challenge (a competitive bidding process prescribed for infrastructure projects unsolicitedly submitted by the private sector) until contract award.



Left to right: Quezon City (QC) Investment Affairs Office Chief Joseph Juico, QC Mayor Joy Belmonte, QPAX CEO Manolo Steven Ona, and QPAX Operations Lead Patrick Olizon.

The project team members are Alex Cabrera (engagement partner), Brando Cabalsi (project lead), Jose Patrick Rosales (project co-lead), and Sidharta Felice Mae Garcia and Karlo Jennuel Antonio (senior associates).

QPAX offers end-to-end traffic enforcement solutions to local government units and national agencies using technologies that have been tried and tested for local use.

Cabrera & Company (formerly Cabrera Lavadia & Associates) is a full service law firm that was established in 2001. It is a member firm of the PwC network and a part of PwC Legal, which is PwC's global legal services network, with taxation, corporation and commercial laws among its practice areas.

Alex Cabrera talks about tax assessment at Entrepreneurs' Organization



PwC Philippines Chairman and Senior Partner Alex Cabrera was the guest speaker in a virtual forum organized by the Entrepreneurs' Organization on 11 February. He did a walk-through of a tax assessment process.

In the Q&A portion, Alex gave sound advice on how to respond to a tax assessment. He educated the audience on tax rules, which are the first line of defense when faced with a tax assessment case by the Bureau of Internal Revenue.

The 150-plus audience was composed of members, their family members and employees.

The Entrepreneurs' Organization is a high-quality support network of 14,000+ like-minded leaders across 61 countries. It helps entrepreneurs achieve their full potential through the power of life-enhancing connections, shared experiences and collaborative learning.

PwC is ranked #1 M&A advisor



PwC was ranked Global #1 M&A Advisor by volume for 2020 by Dealogic, Thomson Reuters and Bloomberg.

PwC also ranked #1 M&A Advisor in Asia Pacific by deal volume for 2020 by MergerMarket. (In the 2020 MergerMarket M&A Report, PwC ranked #1 in Asia Pacific (excluding Japan) league table by deal count and

Asia Pacific (excluding Japan) buyouts league table by deal count.)

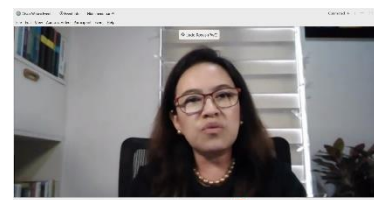
Find out more about PwC Philippines Deals and Corporate Finance practice [here](#).

PwC Philippines' NextGen Club successfully holds its first event for 2021



PwC Philippines successfully conducted the first NextGen Club event for 2021 on 3 February via Webex.

We would like to thank Wilson Chow, PwC's Global Technology, Media and Telecommunications Leader and PwC China Partner, and the following NextGen panelists and for their views and knowledge during these challenging times, and their thoughts and plans, post-pandemic: Jason Gaisano, Partner, Core Capital; Raymond Rufino, Chief Executive Officer, NEO Office PH; and Vanessa Tanco, President/CEO, iACADEMY.



Mary Jade Divinagracia, Deals and Corporate Finance Managing Partner, PwC Philippines opened the NextGen Club series, which will have exciting topics for the rest of the year.



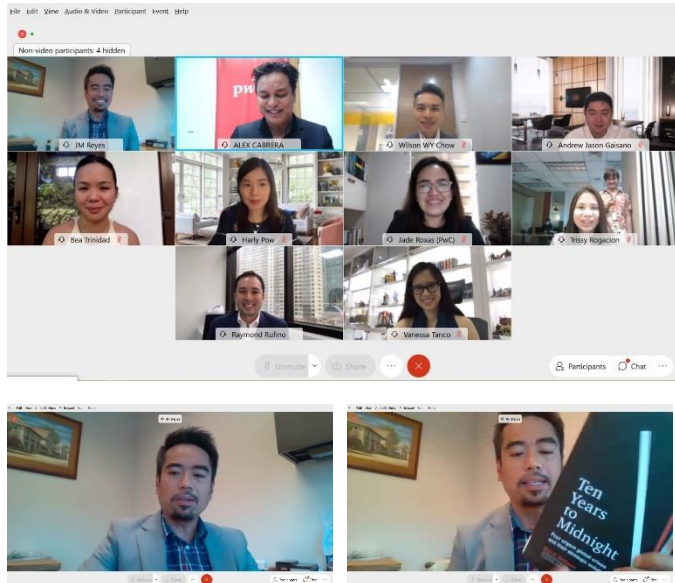
Wilson set the tone for the event on the "new normal" during and after COVID-19, and the key strategic priorities to consider.



PwC Philippines Chairman and Senior Partner Alex Cabrera started the panel discussion on innovations in the NextGens' businesses

during the pandemic.

He led the lively and informative conversation that touched on various areas, including leadership, the power to change, cross-generational experiences and their outlook on their families' organizations.



The spirited discussion continued as two NextGen members of the audience, Harly Geraldine Pow of H.S. POW Construction and Development Corporation and Ana Beatrice Trinidad of CCA Manila, posed thought-provoking questions to the panelists.

JM Reyes, PwC Philippines Assurance Partner and Family Business Leader, gave a comprehensive and insightful recap of the discussion. He also presented the firm's token of appreciation to the three panelists: PwC's book [*Ten Years to Midnight: Four urgent global crises and their strategic solutions*](#) by PwC's Global Leader for Strategy and Leadership, Blair Sheppard.

Watch out for the next event of the NextGen Club series. We invite NextGen leaders to join the club and get ideas, inspiration, and an opportunity to foster connections. Reach out to us by emailing ph_markets@pwc.com.

A timely talk on CREATE bill by Malou Lim



Less than a week before Congress ratified the final version of the Corporate Recovery and Tax Incentives for Enterprises (CREATE) bill, PwC Philippines Tax Managing Partner Malou Lim presented its changes and impact at the 2nd National Summit of CPAs in Commerce & Industry on 28 January via Zoom.

Malou outlined the bill's relevant changes for common taxpayers, and what to watch out for in relation to audited financial statements and annual income tax returns. PwC Philippines Client Accounting Services Director Floredee Odulio moderated the panel discussion that followed.

This year's summit was organized by the Philippine Institute of Certified Public Accountants (PICPA) – Commerce and Industry Sector, Association of CPAs in Commerce and Industry, Metro Manila Geographical Area Office, Metro Manila Region and PICPA Southern Metro Manila Chapter.

As of this writing, the bill now only needs the signature of President Rodrigo Duterte.

PwC PH professionals promote BSA in a career workshop



PwC Philippines Assurance Senior Manager Aldous Sarmiento (in photo, top) and Tax Manager Gabriel Eroy spoke about the accountancy profession in a career workshop hosted by iACADEMY on 13 February via Google Meet.

The Prime 2.0 Workshop: ACCOUNTING AT A GLANCE was attended by incoming and current Senior High School and College students of SY 2021-2022. They will soon be choosing their college programs.

Aldous and Gab shared their insights and experiences as Certified Public Accountants in the Assurance and Tax lines of services, respectively.

iACADEMY is PwC Philippines' first educational partner for the Bachelor of Science in Accountancy (BSA) program.

During the event, Aldous and Gab were introduced as the newest additions to iACADEMY's BSA faculty. Their co-faculty members are colleagues Marvin Madrigalejo (Client Accounting Services Senior Manager) and Jayson Rivera (Assurance Senior Manager).

Talk to us

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

For tax and related regulatory matters



Alexander B. Cabrera
Chairman & Senior Partner,
concurrent Tax Partner
T: +63 (2) 8459 2002
alex.cabrera@pwc.com



Malou P. Lim
Tax Managing Partner
T: +63 (2) 8459 2016
malou.p.lim@pwc.com



Fedna B. Parallag
Tax Partner
T: +63 (2) 8459 3109
fedna.parallag@pwc.com



Lawrence C. Bischocho
Tax Partner
T: +63 (2) 8459 2007
lawrence.bischocho@pwc.com



Carlos T. Carado II
Tax Partner
T: +63 (2) 8459 2020
carlos.carado@pwc.com



Roselle Y. Caraig
Tax Partner
T: +63 (2) 8459 2023
roselle.y.caraig@pwc.com



Harold S. Ocampo
Tax Principal
T: +63 (2) 8459 2029
harold.s.ocampo@pwc.com



Geraldine E. Longa
Tax Partner
T: +63 (2) 8459 2038
geraldine.c.esguerra-longa@pwc.com



Brando C. Cabalsi
Tax Partner
T: +63 (2) 8459 3060
brando.cabalsi@pwc.com

For accounting matters



Gina S. Detera
Assurance Partner
T: +63 (2) 8459 3063



Zaldy D. Aguirre
Assurance Partner
T: +63 (2) 8459 3023
zaldy.aguirre@pwc.com

www.pwc.com/ph

© 2021 Isla Lipana & Co. All rights reserved.

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 155 countries with over 284,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com/ph.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

Disclaimer

The contents of this advisory letter are summaries, in general terms, of selected issuances from various government agencies. They do not necessarily reflect the official position of Isla Lipana & Co. They are intended for guidance only and as such should not be regarded as a substitute for professional advice.

Request for copies

You may ask for the full text of the Client Advisory Letter by writing our Tax Department, Isla Lipana & Co., 29th Floor, Philamlife Tower, 8767 Paseo de Roxas, 1226 Makati City, Philippines. T: +63 (2) 8845 2728. F: +63 (2) 8845 2806. Email lyn.golez@pwc.com.