

What's Inside...

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies).

20/F Chatham House
Valero cor. Rufino Sts.



Salcedo Village
Makati Zip Code



Website
Email



Telephone Nos.



Copyright © 2020 by
Du-Baladad and Associates
(BDB Law). All rights reserved.
No part of this issue covered by
this copyright may be produced
and/or used in any form or by
any means – graphic, electronic
and mechanical without the
written permission of the
publisher.

	<u>PAGE NOS.</u>
Highlights for July 2020	1-2
Significant Court Decisions	
• SUPREME COURT	3
• COURT OF TAX APPEALS	4-12
Significant Regulatory Issuances	
• BUREAU OF INTERNAL REVENUE	13-22
• SECURITIES AND EXCHANGE COMMISSION	23-24
• BANGKO SENTRAL NG PILIPINAS	25-28
• INSURANCE COMMISSION	29
Published Article	
• MANDATORY RELATED PARTY DISCLOSURE	30-32
OUR EXPERTS	
• The personalities	33

HIGHLIGHTS for JULY 2020

HIGHLIGHTS

COURT DECISIONS

- Section 8 of the Bases Conversion and Development Act exempts sale proceeds of properties enumerated therein from all kinds of fees and taxes as the law has already appropriated them for specific purposes and beneficiaries. (*Commissioner of Internal Revenue vs. Bases Conversion and Development Authority, G.R. No. 217898, January 15, 2020*)
- The privilege of VAT zero-rating of Generation Company's sales does not retroact to cover the period prior to the issuance of Certificate of Compliance. (*Trans-Asia Renewable Energy Corporation vs. Commissioner of Internal Revenue, CTA Case no. 9516, July 1, 2020*)
- An entity which claims the benefit of income tax exemption must likewise establish that its income is not derived from any of its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof. (*Contact Centers Association of the Philippines, Inc. (CCAP) vs. Commissioner of Internal Revenue, CTA Case No. 9666, July 8, 2020*)
- A MOA may be treated as an equivalent of a LOA provided that it is compliant with the essential elements of a LOA and was issued by the CIR or his duly authorized representative. (*Golden Arches Realty Corporation v. Commission of Internal Revenue, CTA Case No. 9400, July 9, 2020*)
- Tax base for gross receipts tax purposes should be based on income actually or constructively received and not based on accrued income. (*Aeon Credit Service (Philippines), Inc. vs. Commissioner of Internal Revenue CTA Case No. 9770 dated 15 July 2020*)
- The DOE Certificate of Registration, BOI Registration, and DOE Certificate of Endorsement are mandatory documents to qualify for VAT zero-rating under the Renewable Energy Act. (*Philippine Geothermal Production Company, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 9208 & 9274, July 24, 2020*)
- Payment after the filing of a Petition for Review cannot be considered as an acquiescence to the assessment, such that there is no more disputed assessment to speak of. (*Zenith Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9165, July 29, 2020*)

BIR ISSUANCES

- RR No. 19-2020, July 8, 2020 – This prescribes the use of the new BIR Form No. 1709 replacing BIR Form No. 1702H.
- RMO No. 21-2020, July 10, 2020 – This prescribes the policies, guidelines and procedures for the inspection or supervision of the destruction/disposal and determination of deductible expense pertaining to inventory of goods/assets which have been declared as waste or obsolete.
- RMC No. 74-2020, July 15, 2020 – This amends and/or clarifies certain provisions of RMC No. 34-2020 relative to the suspension of the running of the Statute of Limitations.
- RMC No. 75-2020, July 29, 2020 – This extends the deadline for business registration of those into digital transactions under RMC No. 60-2020.
- RMC No. 76-2020, July 29, 2020 – This clarifies certain issues on the filing of BIR Form No. 1709 or Related Party Transaction ("RPT") Form, and its attachments.

HIGHLIGHTS for JULY 2020

HIGHLIGHTS

SEC ISSUANCES

- SEC OGC Advisory Dated July 03, 2020 – This informs on the reglementary periods in the filing of petitions, appeals, motions, and other pleadings under the 2016 Rules of Procedure of the SEC.
- SEC Notice dated July 12, 2020 – This provides for the filing of Annual Reports during the temporary closure of the SEC Main Office until July 26, 2020.

BSP ISSUANCES

- BSP Circular No. 1091, July 22, 2020 – This provides the exclusion of debt securities held by market from single borrowers limit.
- BSP Circular Letter No. 2020-035, July 27, 2020 – This provides the extension of deadline to comply with the DIGICUR, implementation of targeted financial sanctions and the accompanying Sanctions Guidelines, and the Question-and-Answer document on the Anti-Terrorism Act of 2020.
- BSP Memorandum M-2020-055, July 11, 2020 – This provides the guidelines on the electronic submission of the Annual Report and Audited Financial Statement beginning 2019 which shall be observed by banks.
- BSP Memorandum M-2020-057, July 21, 2020 – This provides the amendments to the operational relief measures for BSP-supervised financial institutions.
- BSP Memorandum M-2020-060, July 24, 2020 – This provides the guidelines on the electronic submission of the Annual Report and Audited Financial Statement beginning 2019 which shall be observed by Non-Bank BSFIs.

IC ISSUANCES

- IC Circular Letter CL-2020-77, July 7, 2020 – This provides the supplemental guidelines on annual reporting of business process outsourcing activities.
- IC Ruling ICR-2020-06, July 9, 2020 – This provides clarification on IC Circular Letter No. 2020-61 reportorial requirement deadlines and their applicability.

SUPREME COURT DECISION HIGHLIGHT

Section 8 of the Bases Conversion and Development Act exempts sale proceeds of properties enumerated therein from all kinds of fees and taxes as the law has already appropriated them for specific purposes and beneficiaries

The government-owned and controlled corporation (“GOCC”) sold real properties in Bonifacio Global City to a joint venture (“JV”). After the GOCC failed to obtain a certificate of tax exemption for the sale, the JV withheld taxes and remitted the same to the BIR. Due to the Commissioner of Internal Revenue’s (“CIR”) inaction on the claim for refund filed by the GOCC, the claim was elevated to the Court of Tax Appeals (“CTA”). The CTA, both in Division and *En Banc*, affirmed the claim for refund of creditable withholding taxes (“CWT”) in connection with the sale of the aforementioned real properties.

The Court ruled that the GOCC is exempt from CWT on the sale of the real properties in Bonifacio Global City. Such exemption is found on Section 8 of the Bases Conversion and Development Act. Under the said provision of the law, the sale proceeds of certain properties are deemed appropriated by Congress to specific recipients. Consequently, the sale proceeds are not the income of the GOCC but public funds subject to the distribution scheme and purposes provided in the law itself. Further, the said provision expressly enjoins that the proceeds of the sale shall not be diminished by any item or circumstance, including all forms of taxes and fees.

In addition, Section 27 of the Tax Code, as amended, did not repeal the tax exemption under Section 8 of the Bases Conversion and Development Act. The former is a general law while the latter is a special law. As a rule, a general law cannot impliedly a special law. (*Commissioner of Internal Revenue vs. Bases Conversion and Development Authority, G.R. No. 217898, January 15, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

Sales of services to international shipping lines doing business in the Philippines are qualified for VAT zero-rating under Section 108(B)(4) of the 1997 Tax Code

The taxpayer alleges that it rendered corporate and administrative services for the ocean transportation business of its affiliates which are both non-resident foreign corporations doing business outside the Philippines. Thus, the taxpayer claims that its export sales of services are subject to VAT at zero percent (0%) pursuant to Section 108(8)(2) of the 1997 Tax Code

The Court finds taxpayer's reliance on Section 108(8)(2) misplaced in view of its admission that although its affiliates' international shipping businesses are primarily conducted outside the Philippines, less than one percent of such shipping businesses may be considered related to the Philippines because its international vessels ply Philippine ports. Instead, the Court finds that the taxpayer's refund claim is anchored under Section 108(B)(4) of the Tax Code or sales of services rendered to persons engaged in international shipping. (*Maersk Global Services Centres (Philippines) Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 9537, June 30, 2020*)

The privilege of VAT zero-rating of Generation Company's sales does not retroact to cover the period prior to the issuance of Certificate of Compliance

The taxpayer contends that the absence of a Certificate of Compliance ("COC") does not necessarily amount to an absence of authorization from the Energy Regulatory Commission ("ERC") for a generation company to engage in preparatory activities which resulted in the incurrence of input VAT. Thus, taxpayer claims that its sales for the period of claim qualify for VAT zero-rating.

The Court ruled that to be eligible for the grant of VAT zero-rating under Section 15(g)1 of RA no. 9513 or the "Renewable Energy Act of 2008", the seller should be a "generation company" with an authority embodied in a COC issued by the ERC which must be secured before the actual commercial operations of the generation facility. Here, although a COC was eventually issued to taxpayer, the privilege of VAT zero-rating did not retroact to cover the period prior to its issuance. (*Trans-Asia Renewable Energy Corporation vs. Commissioner of Internal Revenue, CTA Case no. 9516, July 1, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The final determination of the CIR as to the tax liability is necessary in order for the Court to rule on the civil aspect of the criminal case

The taxpayer was criminally charged for wilfully and unlawfully filing false and fraudulent income tax returns and audited financial statements. The Court of Tax Appeals ("CTA") acquitted the taxpayer and ruled that there was no basis to rule upon the civil liability as no assessment notice was presented.

On appeal, the Commissioner of Internal Revenue ("CIR") contended that an assessment is not necessary in a civil action for collection of delinquency tax that is deemed simultaneously instituted with the criminal case.

The Joint Complaint-Affidavit of the Revenue Officers (ROs), which does not bear the signature of the CIR, contained the computation of deficiency income tax of the taxpayer. The CIR asserted that his endorsement of the findings of the ROs to the Secretary of Justice can be treated as the final determination and approval of the said computation.

The Court *En Banc* ruled that the said endorsement is only for "preliminary investigation and the filing of an Information in court" against the taxpayer. There is no requirement for the precise computation and assessment of the tax liability before there can be a criminal prosecution under the 1997 Tax Code, as amended. However, in order for a civil liability to be included in the judgment, it must be the final decision of the CIR - referring to a formal assessment. The Joint Complaint-Affidavit of ROs cannot be deemed as a formal assessment. (*People of the Philippines vs. Leonila T. Arceo, CTA EB Crim No. 060, July 1, 2020*)

To satisfy the due process requirement in tax assessments, the assessment must contain both the FLD and Assessment Notices.

The Commissioner of Internal Revenue ("CIR") files the Petition for Review before the Court *En Banc* and argues that the Court in Division erred in its decision when it stated that there was no showing that the Assessment Notices were issued and enclosed together with the Formal Letter of Demand ("FLD"), and that the absence of the same is fatal to CIR's claim and violates the due process requirements under the laws.

The Court *En Banc* ruled against the CIR. It held that to satisfy the due process requirement, the assessment must contain both the FLD and Assessment Notices. Taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. The use of the word "shall" under Section 3 of Revenue Regulations No. 12-99 connotes a mandatory character that cannot be brushed aside.

In this case, however, the Assessment Notices were not found in the records and neither was it proven, in any way, that taxpayer received the same together with the FLD. Thus, the CIR's petition for review was denied. (*Commissioner of Internal Revenue vs. GS MTE Grains Corporation, CTA EB No. 1958, July 6, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

An entity which claims the benefit of income tax exemption must likewise establish that its income is not derived from any of its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof.

The taxpayer argues that the deficiency tax assessment issued against it should be cancelled since as a non-profit business organization, it enjoys exemption from income tax under Sec 30(F) of the Tax Code. It insists that a certificate of tax exemption is not a condition *sine qua non* for a taxpayer to be entitled to income tax exemption, as the basis of such exemption is the Tax Code, and not the BIR certificate or ruling.

Under Section 30(F) of the Tax Code, to be exempt from income tax, the following requirements must be met:

1. The business league, chamber of commerce, or board of trade, is not organized for profit;
2. No part of the net income inures to the benefit of any private stockholder, or individual; and,
3. The income must not be from any of their properties, real or personal, or from any of their activities conducted for profit.

According to the Court, apart from proving that it is included in the enumeration in Section 30, an entity which claims the benefit of income tax exemption must likewise establish that its income is not derived from any of its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof. Tax exemptions are construed strictly against the one invoking such exemption, and the burden of proof rests upon the party claiming the exemption to prove that it is, in fact, covered by the exemption so claimed. Thus, the burden of proof lies with the taxpayer to show that the income subject of the assessment was not sourced from its real or personal properties, or from any profit-generating activity. Absent such proof, the assessment made by respondent shall be upheld because tax assessments are presumed correct and made in good faith.

Since taxpayer failed to discharge its burden of proof that the income being assessed was not derived from its real or personal properties, or from any activity conducted for profit, regardless of the disposition, Court is constrained to sustain the assessment made as it is presumed correct and made in good faith. (*Contact Centers Association of the Philippines, Inc. (CCAP) vs. Commissioner of Internal Revenue, CTA Case No. 9666, July 8, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

To enjoy VAT zero-rating, the services performed in the Philippines must be other than processing, manufacturing or repacking of goods

The taxpayer posits that its sales of services to its clients qualify as zero-rated sales of services. The Commissioner of Internal Revenue (“CIR”) argued that in claims for refund, the taxpayer has the burden of proof and must adduce the required documents under the law, rules and regulations. It is claimed that the taxpayer failed to comply with mandatory requirements for claims for VAT Credit/Refund.

The Court held that for services performed in the Philippines to enjoy VAT zero-rating, the services must be other than processing, manufacturing or repacking of goods. In the absence of proof that the services the taxpayer rendered were not in the same category as “processing, manufacturing or repacking of goods” and that they were performed in the Philippines, the taxpayer failed to establish compliance with said requisite. Hence, the services rendered by the taxpayer do not qualify for VAT zero-rating. (*New York Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9669, July 9, 2020*)

Absence of an eLOA does not invalidate an assessment when an LOA was duly issued by the CIR or his authorized representative and the same was received by the taxpayer

The taxpayer claims that the assessments issued against it are null and void since no eLOA was issued and served against it. In the absence of the eLOA, it cannot be legally compelled to pay and made liable for the alleged deficiency taxes and compromise penalty as well as deficiency and delinquency interests.

The Court held that the absence of an eLOA did not invalidate the subject assessments. The law merely requires a valid LOA emanating from the CIR or his authorized representative for the investigating revenue officers to legally commence tax examination against the taxpayer. In this case, an LOA dated May 14, 2010 was issued to the revenue officers authorizing them to conduct a tax examination over the Taxpayer and the latter received the same. However, the Court held that on account of the infirmities in both the Formal Letter of Demand (“FLD”) and Final Decision on Disputed Assessment (“FDDA”), the subject assessments are void for failure to comply with the due process requirements of a valid assessment under the NIRC. Both the FLD and FDDA failed to state the date certain for the payment of the deficiency taxes and to provide a definite amount of taxes to be paid hence, the Taxpayer may not be adjudged to account for deficiency taxes which in the first place are not legally demandable. (*Robinsons Land Corporation v. Commissioner of Internal Revenue, CTA Case No. 9163, July 9, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

A MOA may be treated as an equivalent of a LOA provided that it is compliant with the essential elements of a LOA and was issued by the CIR or his duly authorized representative

The taxpayer raises that the revenue officers who conducted the audit are not the same revenue officers stated in the Letter of Authority (“LOA”), rendering the audit investigation void.

The Court held that the revenue officers have no authority to conduct the audit investigation thus, the assessment is void. A document, such as a Memorandum of Assignment, may be treated as an equivalent of a LOA provided that it is compliant with the essential elements of a LOA and was issued by the CIR or his authorized representative who is the Revenue Regional Director, or in cases of taxpayers falling under the Large Taxpayers Division, the Assistant Commissioner/Head Revenue Executive Assistants. In this case, the Memorandum of Assignment was only signed by the OIC-Chief of the Regular LT Audit Division 3. He is neither of the officials authorized to issue an LOA hence, the revenue officers named under the Memorandum have no authority to continue the Taxpayer’s audit and the resulting assessment is void. (*Golden Arches Realty Corporation v. Commission of Internal Revenue, CTA Case No. 9400, July 9, 2020*)

The imposition and collection of compromise penalties must conform to the administrative issuance in effect at the time of the verification and validation of the taxpayer

The taxpayer seeks the refund of or issuance of a tax credit certificate allegedly representing compromise penalties erroneously collected and/or imposed without authority. It contends that the BIR did not have any basis, in fact and in law, to impose and collect the penalties involved herein.

The Court held that the subject compromise penalties were wrongfully collected and without authority. Payment of the suggested compromise penalties must conform to the schedule of compromise penalties provided under RMO No. 1-90 or any revision thereon after the promulgation of RR No. 12-99. At the time BIR conducted the verification and validation of the Taxpayer, RMO No. 19-2007 was in effect. It requires that all amounts of compromise penalties incident to violations shall be itemized in a separate assessment notice/demand letter as the amounts suggested to the taxpayer to pay in lieu of criminal prosecution. In this case, the BIR, in imposing the compromise penalties and in directing the Taxpayer to pay the same, did not follow the above-mentioned requirement. BIR merely issued BIR Form No. 0605 (Payment Form) indicating that the taxpayer is liable for alleged violations. For failure to observe the requirements, the amount of compromise penalties is deemed collected without authority and may be considered as wrongfully collected. (*Henryville, Inc., v. Commission of Internal Revenue, CTA Case No. 9365, July 10, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

Failure to interpose a timely objection to evidence at the time they were offered in evidence shall be considered waived

The Commissioner of Internal Revenue (“CIR”) avers that the documentary exhibits by the taxpayer should not be given probative value for being hearsay evidence. Accordingly, the taxpayer’s witnesses allegedly have no personal knowledge of the fact of issuance and contents of the documentary exhibits.

The Court has held that the objection to evidence must be made after the evidence is formally offered. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose of which the evidence is being offered. It is only at this time, and not any other, that objection to the documentary evidence may be made. Otherwise, the right to object shall be considered waived.

Here, despite due notice to the CIR, it failed to file any comment or opposition to any of the evidence offered in taxpayer’s Formal Offer of Evidence. (*Commissioner of Internal Revenue vs. Procter and Gamble Asia PTE. LTD. CTA EB No, 1998 dated July 14, 2020*)

Questions on the reasonableness of the RPT assessment is a question of fact and, therefore, the exhaustion of administrative remedies must be observed

The LGU assessed the taxpayer for the payment of real property taxes (“RPT”) for its machineries. The taxpayer filed directly to courts claiming the illegality of the assessment.

The Court has held that when the question is one on reasonableness of the RPT assessment, which is a question of fact, the taxpayer must exhaust administrative remedies before it could elevate the same with the Court. On the other hand, when the question pertains to the legality of the RPT assessment, which is a question of law, then the taxpayer may proceed directly to the courts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.

Here, albeit the taxpayer’s claims that its Petition with the RTC and Court contains a question of law and, therefore, does not need to exhaust all administrative remedies, the first argument in its petition addresses the issue of whether its facility was a blending and storage facility, in accordance with RA 9367, or purely a storage facility. Logically, the issue can only be resolved by presenting evidence thereon; thus a question of fact. Therefore, the taxpayer must have resorted to exhaust all administrative remedies first before going to the courts. (*Jetti Petroleum, Inc. vs. Ms. Emerlinda S. Talento et.al. CTA EB No. 2093 dated July 14, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

In VAT on sales of refined sugar, the VAT required to be paid in advance per RR No. 8-15 is the very same VAT to be imposed on the subsequent sale of refined sugar, and any advance VAT paid upon withdrawal shall be allowed as credit against its output tax arising from the sales of refined sugar

Under RR No. 8-15, the taxpayer is required to pay in advance the output tax of its refined sugar prior to its withdrawal from the sugar refinery/mill. However, it subsequently sold its refined sugar to a PEZA-registered entity, which is entitled to VAT zero-rating. Hence, the taxpayer claimed for refund the advance output taxes paid because no output tax could be claimed arising from the said sale. Conversely, the Commissioner denied the claim and the advance payment shall be valid based on valid regulation.

The Court has held that RR No. 8-15 provided that a Certificate of Advance Payment of the VAT shall be required before the proprietor be allowed any withdrawal of refined sugar from its premises. Further, the amount of advanced VAT payments shall be allowed credit against the output tax based on the actual sale. The VAT implications of the withdrawal of the refined sugar from the sugar refinery/mill and the actual sale of refined sugar are different. To be clear, the transaction subject to VAT is still the sale of refined sugar. The withdrawal of sugar is not a separate transaction subject to VAT. It is only the payment thereof that is required to be paid in advance.

Although the said advance VAT on the refined sugar is eligible for a claim for refund, the Court denied the taxpayer's claim on the ground that it failed to prove that the advance VAT payment actually pertains to the zero-rated sales and that it was not credited/applied against its output VAT. (*Sucden Philippines, Inc. vs. Commissioner of Internal Revenue CTA Case No. 9754 dated July 15, 2020*)

Tax base for gross receipts tax purposes should be based on income actually or constructively received and not based on accrued income

The taxpayer files for claims for refund of erroneously paid Percentage Taxes based on its gross receipts. Accordingly, it included in its payment of Percentage Tax in 2015 accrued income, and erroneously included the same upon receipt of payment in 2016.

The Court has held that in determining the gross receipts as the basis for percentage taxes, accrued income was not to be included. Accordingly, gross receipts mean the amount of income actually or constructively received without any deduction. Accrued income, however, refers to income already earned but not received – neither physically nor constructively. Hence, accrued income shall not be included in computation of gross receipts. (*Aeon Credit Service (Philippines), Inc. vs. Commissioner of Internal Revenue CTA Case No. 9770 dated 15 July 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The DOE Certificate of Registration, BOI Registration, and DOE Certificate of Endorsement are mandatory documents to qualify for VAT zero-rating under the Renewable Energy Act

The taxpayer sought to refund excess unutilized creditable input tax in relation to VAT zero-rated sales pursuant to the Renewable Energy Act. In support of its claim the taxpayer presented its DOE Certificate of Registration and its BOI Certificates of Registration, which was issued outside the period of claims.

The Court denied the taxpayer's claim for refund due to its failure to present the Certificates of Endorsement issued by the DOE in its favor. It ruled that the use of the word "shall" in the implementing rules and regulation of the Renewable Energy Act of 2008 indicates the mandatory submission of the following documents in order to qualify for VAT zero-rating: (1) DOE Certificate of Registration; (2) Registration with the BOI; and (3) Certificate of Endorsement by the DOE. For the taxpayer's failure to present all the above-stated documentary evidence, its reported zero-rated sales/receipts cannot qualify as VAT zero-rated sales. (*Philippine Geothermal Production Company, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 9208 & 9274, July 24, 2020*)

The CTA is not limited by the evidence presented in the administrative claim in the BIR

In its administrative claim for refund of excess/unutilized input VAT, the taxpayer failed to submit the original copy of the certification from the Securities and Exchange Commission ("SEC") that the non-resident foreign corporation-buyer is not a registered corporation in the Philippines and a Certificate of Incorporation from the foreign country. Thus, in its Answer to taxpayer's Petition for Review, the Commissioner of Internal Revenue contends that no probative value should be given to documents that the taxpayer did not submit at the administrative level.

The CTA ruled that cases filed before it are litigated de novo; thus, the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting to the Court all evidence required for the successful prosecution of its administrative claim. The taxpayer may present new and additional evidence to support its case for tax refund. Here, although the taxpayer presented the relevant SEC Certifications of Non-Registration, it still failed to discharge the burden of proving that its clients are doing business outside the Philippines. (*Nippon Express Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9873, July 27, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The BIR must have initially conducted a surveillance or stocktaking against the taxpayer before the issuance of a 48-Hour Notice, 5-day VAT Compliance, and Closure Order

The taxpayer received a Letter of Authority and subsequently, a 48-Hour Notice from the BIR informing the latter of its failure to issue sales invoices/receipts and pay VAT. The BIR did not conduct any surveillance against the taxpayer before the issuance of the said Notice. When the taxpayer filed a Petition for Review before the Court to declare the said Notice null and void, the Commissioner of Internal Revenue ("CIR") argues that the Court has no jurisdiction over the case pointing out that the taxpayer must wait for the Final Decision on Disputed Assessment.

The Court ruled that its appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds but also covers other cases that arise out of the Tax Code or related laws administered by the BIR, as in this case. As to the substantive issue, for purposes of the issuance of a 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order under Revenue Memorandum Order No. 3-2009, a taxpayer, to be considered as "non-compliant", the BIR must have initially conducted a surveillance or stocktaking against the latter. Here, the CIR violated taxpayer's right to due process when the CIR failed to act in accordance with the prescribed procedure before issuing the subject notices. (*Paymentwall, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9727, July 28, 2020*)

Payment after the filing of a Petition for Review cannot be considered as an acquiescence to the assessment, such that there is no more disputed assessment to speak of

Merely days following the filing of a Petition for Review, the taxpayer paid the entire amount of alleged deficiency liabilities. For the Commissioner of Internal Revenue ("CIR"), this positive act by the taxpayer is conclusive of its admission of its tax liabilities; hence estopped the latter from contesting the legality and validity of the assessment.

The Court ruled that the taxpayer's subsequent payment to avert the impending cancellation of its Importer Accreditation will not be considered as acceding to the assessment that will strip the Court of its jurisdiction, especially when the taxpayer itself made it clear that such payment was without conceding liability. Besides, regardless of payment, appeal is a remedy available to the taxpayer. (*Zenith Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9165, July 29, 2020*)

BIR ISSUANCES HIGHLIGHTS

RR No. 18-2020

June 26, 2020

This implements the VAT exemption on the sale and importation of drugs and medicines prescribed for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis and kidney diseases

This revenue regulation amends Section 109(AA) of the Tax Code, as amended, and further amends RR No. 16-2005, as amended by RR No. 13-2018, to include as among the VAT exempt transactions the sale or importation of prescription drugs and medicines for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis and kidney diseases.

The exemption from VAT under this subsection shall only apply to the sale or importation by the manufacturers, distributors, wholesalers and retailer of drugs and medicines included in the "list of approved drugs and medicines" issued by the Department of Health for this purpose.

The VAT on importation of prescription drugs and medicines for diabetes, high cholesterol and hypertension shall be refunded pursuant to Section 204(C) of the Tax Code, as amended, in accordance with the existing procedures for refund of VAT on importation, provided that the input tax on the imported items have not been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns. The same shall not be allowed as input tax credit pursuant to Section 110 of the Tax Code, as amended, for purposes of computing the VAT payable of the concerned taxpayer/s for the said period.

RR No. 19-2020

July 8, 2020

This prescribes the use of the new BIR Form No. 1709 replacing BIR Form No. 1702H

Taxpayers are now required to submit BIR Form No. 1709 and its supporting documents to disclose the existence of related parties and related party transactions.

The following are considered as "related parties"

- a. A person or a close member of that person's family is related to a reporting entity if that person:
 - i. has control or joint control of the reporting entity;
 - ii. has significant influence over the reporting entity; or
 - iii. is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

The list of family members in the definition of "close members of the family of a person" is not exhaustive and may include other family members, such as parents or grandparents, depending on the assessment of specific facts and circumstances.

- b. An entity is related to a reporting entity if any of the following conditions applies:
 - i. The entity and the reporting entity are members of the same group.
 - ii. One entity is an associate or joint venture of the other entity or of a member of a group of which the other entity is a member.

BIR ISSUANCES

HIGHLIGHTS

RR No. 19-2020

July 8, 2020

This prescribes the use of the new BIR Form No. 1709 replacing BIR Form No. 1702H

- iii. Both entities are joint ventures of the same third party.
- iv. One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
- v. The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.
- vi. The entity is controlled or jointly controlled by a person identified in (a).
- vii. A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity or of a parent of the entity.
- viii. The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

The substance of relationships between entities shall be taken into account.

Related party transactions shall include, but is not limited to, the following:

- a. purchases or sales of goods (finished or unfinished);
- b. purchases or sales of property and other assets;
- c. rendering or receiving of services;
- d. leases;
- e. transfers of research and development;
- f. transfers under license agreements;
- g. transfers under finance arrangements;
- h. provision of guarantees or collateral;
- i. commitments to do something if a particular event occurs or does not occur in the future, including executory contracts; and
- j. settlement of liabilities on behalf of the entity or by the entity on behalf of that related party.

The following procedures and guidelines must be observed:

1. BIR Form No. 1709 shall be completely and truthfully accomplished by the taxpayer or its authorized representative/s and shall be attached to the ITRs for the current taxable year and subsequent years, making it an integral part of the latter.
2. The "business overview of the ultimate parent company" shall include the profile of the multinational group of which the taxpayer belongs, along with the name, address, legal status and country of tax residence of each of the related parties with whom intra-group transactions have been entered into by the taxpayer, and ownership linkages among them.

BIR ISSUANCES HIGHLIGHTS

RR No. 19-2020

July 8, 2020

This prescribes the use of the new BIR Form No. 1709 replacing BIR Form No. 1702H

3. The nature of transaction and the accounts affected shall be described in detail.
4. The "functional profile" shall include a broad description of the business of the taxpayer and the industry in which it operates, and of the business of the related parties with whom the taxpayer has transacted;
5. The following are required to be attached to BIR Form No. 1709:
 - a. certified true copy of the relevant contracts or proof of transaction;
 - b. withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;
 - c. proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident;
 - d. certified true copy of Advance Pricing Agreement, if any; and
 - e. any transfer pricing documentation.
6. No spaces shall be left unanswered. If one or some portions are not applicable, such fact shall be so stated.

RMO No. 21-2020,

July 10, 2020

This prescribes the policies, guidelines and procedures for the inspection or supervision of the destruction/disposal and determination of deductible expense pertaining to inventory of goods/assets which have been declared as waste or obsolete

The prescribed policies and guidelines in the conduct of inspection and supervision of the destruction/disposal of the inventories, machineries or equipment applied for destruction or disposal in relation to the determination of deductible expense pertaining to inventory of goods/assets which have been declared as waste or obsolete due to spoilage, deterioration, obsolescence, expiration, or other causes rendering the same unfit for sale or for use in production are updated as follows:

- a. The "Application for Destruction/Disposal of Goods/Assets" shall be filed with and processed by the concerned Large Taxpayer (LT) Office or Revenue District Office (RDO) where the principal place of business of the taxpayer is registered. The said Application shall be filed by the taxpayer in duplicate copies, together with complete documentary requirements, at least seven (7) days before the proposed scheduled date of destruction/disposal of the inventories/equipment.
- b. The BIR shall inform the taxpayer-applicant within five (5) days from receipt of application as to the approved manner of witnessing and schedule of destruction/ disposal. If the method approved is through a third party, the BIR shall issue a letter to the third party, through the taxpayer, within the same period;

BIR ISSUANCES

HIGHLIGHTS

***RMO No. 21-2020,
July 10, 2020***

This prescribes the policies, guidelines and procedures for the inspection or supervision of the destruction/disposal and determination of deductible expense pertaining to inventory of goods/assets which have been declared as waste or obsolete.

- c. In the event that the destruction/disposal activity cannot be completed in one (1) day, the same may be scheduled in a manner acceptable to both the taxpayer and the BIR or BIR authorized representative until the total volume applied for has been entirely destroyed or disposed of;
- d. The date of the destruction shall be scheduled on regular working days. However, destruction may be conducted on a weekend or on a nonworking holiday subject to prior approval by the BIR;
- e. The valuation that will be used for the inventory or assets to be disposed/ destroyed shall be the actual cost. If the actual cost cannot be accurately determined, the inventory valuation maintained and used by the taxpayer shall be adopted subject to adjustment upon verification during the audit;
- f. Deduction of losses for Income Tax purposes arising from inventory destruction or disposal shall be allowed after witnessing and issuance of the "Certificate of Deductibility of Goods/Assets Destroyed/Disposed". The BIR shall issue the said certificate within five (5) days from the date of submission by the taxpayer of the complete documents (e.g. photos and videos, inventory count sheet, etc.) of destruction/disposal;
- g. In case the inventories/assets applied for disposal are, for any reason or cause, replaced/substituted by its supplier, or the taxpayer shall become entitled to reimbursement for the partial or equivalent value thereof by an insurance company, the claim for the deductibility of the value thereof shall be denied;
- h. In case any discrepancy is discovered in the course of the evaluation and verification of the application for deductibility, and that it was determined that the taxpayer has already claimed such deductions for Income Tax purposes, the taxpayer shall be subjected to mandatory audit;
- i. The corresponding reports bearing on the results of inventory destruction as well as the "Certificate of Deductibility of Goods/Assets Destroyed/Disposed" shall be approved by the Assistant Commissioner-Large Taxpayers Service (LTS) or Regional Director, which may be delegated in writing to the Division Chiefs of the LT Office/RDO having jurisdiction over the applicant-taxpayer;
- j. Destruction/disposal of goods, products and articles subject to Excise Tax shall be witnessed/validated by the authorized BIR official from the Excise Tax Divisions of the LTS.

BIR ISSUANCES

HIGHLIGHTS

**RMO No. 23-2020,
July 9, 2020**

This provides for the issuance of ATRIG for VAT exemption on the sale and importation of prescription drugs and medicines

The Authority to Release Imported Goods (“ATRIG”) for VAT exemption on the sale and importation of prescription drugs and medicines shall be issued with the following effectivity dates:

- a. Diabetes, high cholesterol and hypertension beginning January 27, 2020; and
- b. Cancer, mental illness, tuberculosis and kidney diseases beginning January 1, 2023.

For VAT purposes, the ATRIG shall be issued on all importations of articles exempt from VAT pursuant to Revenue Memorandum Order No. 35-2002, which is currently being implemented by the Revenue District Office No. 33 – Intramuros-Ermita-Malate of Revenue Region No. 6 – Manila.

**RMO No. 25-2020,
July 24, 2020**

This amends the second and third paragraphs of RMO No. 23-2020 prescribing the issuance of ATRIG for VAT Exemption on the importation of prescription drugs and medicines

The second and third paragraphs of RMO No. 23-2020 are amended, to read as follows:

“For VAT purposes, the ATRIG shall be issued on all importations of articles exempt from VAT pursuant to Revenue Memorandum Order (RMO) No. 35-2002 dated October 28, 2002 **at the Revenue District Office (RDO) having jurisdiction over the port of entry.**”

“For consistency in the issuance of ATRIG for VAT-exempt transactions, **the RDO having jurisdiction over the port of entry** shall process application for ATRIG by the manufacturers, distributors, wholesalers and retailers of drugs and medicines included in the “list of approved drugs and medicines” issued by the Department of Health (DOH). The policies, guidelines and procedures set forth in RMO No. 35-2002 shall be strictly followed and observed.”

**RMC No. 69-2020,
July 13, 2020**

This provides for the revised procedures on the cancellation of PTU, CRM, POS Machines, and other similar sales machines generating receipts/invoices

The revised procedures on the cancellation of Permit to Use (“PTU”), Cash Register Machines (“CRM”), Point-of-Sale (“POS”) Machines, and other similar sales machines generating receipts/invoices in compliance with RA No. 11032 otherwise known as the “Ease of Doing Business and Efficient Government Service Delivery Act of 2018” are as follows:

- a. The cancellation of the PTU CRM/POS machine shall be processed by the RDO/LT Office having jurisdiction over the taxpayer’s business address where the machine was registered;
- b. The taxpayer shall notify the concerned RDO/LT Office, in writing, on their request for cancellation of the PTU within five (5) days from the date the machine was last used/withdrawn from use stating the reason(s) for the cancellation and other information;

BIR ISSUANCES HIGHLIGHTS

- c. The taxpayer shall submit the required documents as an attachment to the Letter or to the assigned RO at the time of machine inspection;
- d. Actual inspection of the CRM/POS shall be mandatory in case of its withdrawal from use or its transfer to another branch of the company. However, in case of modification/upgrading of the software being used, actual inspection of the machine may be dispensed with under certain conditions;
- e. In case of withdrawal from use or transfer of the CRM/POS to another branch of the taxpayer, the assigned RO shall conduct an inspection of the machine;
- f. Non-payment of the penalties at the time of the request for cancellation of the PTU shall not be a ground for the non-issuance of the Cancellation Certificate;
- g. The assigned RO shall submit a Memorandum Report on the result of the inspection upon completion of the machine inspection and submission of the required documents by the taxpayer, which shall be approved by the Assistant Commissioner, LTS/RDO;
- h. Upon approval of the said Memorandum Report, the Client Support Section Chief of the RDO/Chief, LT concerned office or its authorized staff shall cancel the PTU and the MIN of the machine in the eAccReg system and generate the Cancellation Certificate;
- i. In compliance with the processing time in the Citizen's Charter, the Cancellation Certificate must be issued within seven (7) days from receipt of the letter request of the taxpayer by the concerned RDO/LT Office. In case when inspection of the machine was dispensed with, the Cancellation Certificate shall be issued to the taxpayer within three (3) working days from receipt of the complete requirements by the RDO/concerned LT Office;
- j. The concerned LT Office/RDO shall approve the application for PTU through the eAccReg within three (3) days from receipt of such application;
- k. In order to authorize the simultaneous registration in eAccReg system of the new accredited software or upgraded software to be installed in the same machine with application for cancellation of the old software, the taxpayer shall secure approval in writing from the concerned LT Office/RDO to add a distinct prefix/suffix to the serial number of the sales machine to allow registration of the new software.

BIR ISSUANCES

HIGHLIGHTS

***RMC No. 72-2020,
July 17, 2020***

This amends the requirement for submission of photocopies of documents evidencing credit extensions and credit restructurings granted by covered institutions during the ECQ

The requirement under part C of RMC No. 36-2020 on the submission of photocopies of documents evidencing credit extensions and credit restructurings granted by covered institutions during the ECQ is removed.

***RMC No. 74-2020,
July 15, 2020***

This amends and/or clarifies certain provisions of RMC No. 34-2020 relative to the suspension of the running of the Statute of Limitations

The penultimate paragraph of the said Circular is amended to read as follows:

"The cited provisions and stated circumstances therefore warrant the suspension of the running of the Statute of Limitations under Section 203 and 222 of the NIRC of 1997, as amended, for a period starting on March 16, 2020 **until the lifting of the extreme community quarantine (ECQ)** and for sixty (60) days thereafter. The suspension of the running of the Statute of Limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection of deficiency taxes. This Circular shall apply nationwide on areas placed under ECQ."

***RMC No. 75-2020,
July 29, 2020***

This extends the deadline for business registration of those into digital transactions under RMC No. 60-2020

The deadline for business registration and/or updates with no penalty imposition of those into digital transactions under RMC No. 60-2020 is extended from July 31, 2020 to August 31, 2020. Those who shall voluntarily declare their past transactions subject to pertinent taxes and pay the taxes due thereon shall not be subject to the corresponding penalty for late filing and payment when declared and paid on or before the said extended date and those who will be found later doing business without complying with the registration/update requirements and those who failed to declare past due taxes/unpaid taxes shall be imposed with the applicable penalties.

BIR ISSUANCES HIGHLIGHTS

***RMC No. 76-2020,
July 29, 2020***

This clarifies certain issues on the filing of BIR Form No. 1709 or Related Party Transaction (“RPT”) Form, and its attachments

The clarifications are as follows:

- a. The RPT Form shall be accomplished and filed manually by Philippine taxpayers with RPTs regardless of the amount and volume of transactions. Individuals who are considered related parties of a reporting company are also required to submit the RPT Form in their individual capacities. A transfer pricing documentation (“TPD”) is required to be attached in the RPT Form;
- b. The RPT Form is now required to be submitted as an attachment to the Annual Income Tax Return (“AITR”) for fiscal year ending March 31, 2020, tentative or otherwise, irrespective of the date of filing of the said AITR, and to all AITRs to be submitted after such date. AITRs for calendar year 2019 or for fiscal year ending before March 31, 2020 are not covered by RR No. 19-2020;
- c. The taxpayers are given another two (2) months from July 30, 2020, or until September 30, 2020, within which to prepare, file and submit the RPT Form and its required attachments;
- d. There is no need to resubmit the AITR to the BIR. The taxpayer will only have to attach a photocopy of the duly filed AITR when submitting the RPT Form and its attachments;
- e. For manual filers, the RPT Form and its required attachments must be submitted, together with the AITR and other required attachments, at the LT Division/RDO where the taxpayer is registered, on or before the statutory due date. For eFPS filers, the hard copy of RPT Form and its required attachments must be submitted manually and stamped “Received” at the LT Division/RDO where the taxpayer is registered, within fifteen (15) days from the statutory due date or actual date of electronic filing of the AITR, whichever comes later;
- f. If the parent company has a TPD already covering the transactions with subsidiaries, the subsidiaries can use the same TPD, provided the taxpayer relied upon such TPD in determining the transfer prices. However, the local file is preferred;
- g. The TPD should include the creation or preparation date so as to ensure its applicability to the RPTs conducted in the taxable year concerned. The TPD should be prepared prior to or at the time of the transaction, or after the transaction but not later than the filing date of the tax return for the fiscal/calendar year in which the transaction takes place. The TPD has to be updated yearly if there are significant changes in the business model, the factors or conditions considered in drafting the TPD, and the nature of the RPTs;

BIR ISSUANCES

HIGHLIGHTS

RMC No. 76-2020,

July 29, 2020

This clarifies certain issues on the filing of BIR Form No. 1709 or Related Party Transaction (“RPT”) Form, and its attachments

- h. The TPD for the immediately preceding year may apply to subsequent RPTs if the transaction for which the past TPD was prepared is of the same type as the transaction undertaken in the taxable year concerned and was undertaken with the same related party/ies; and if the taxpayer can prove that the same conditions, which were made the bases for the past TPD, are squarely applicable to the RPTs in the taxable year concerned;
- i. RR No. 19-2020 requires full disclosure of all RPTs regardless of whether a price is charged. Unlike the disclosure of related party transactions in the notes to the financial statements, the RR requires more details to be disclosed in Parts II and III of the RPT Form;
- j. Dividends and redemption of shares between and among related parties (either paid or payable, received or receivable) should likewise be disclosed in the RPT Form;
- k. The contracts to be attached to the RPT Form are those executed by the parties to substantiate the RPTs in the taxable year concerned. On the other hand, contracts executed in the previous year, but are still enforceable and applicable to the RPTs in the taxable year concerned, have to be attached;
- l. Any taxes paid to a foreign country by a Philippine taxpayer must be declared in, and the proof of payment thereof must be attached to, the RPT Form;
- m. If the taxpayer earned an income from its related party in a foreign country but has yet to pay the tax thereon after the filing of the RPT Form, the taxpayer still has to declare in the RPT Form such income and indicate in the column for withholding taxes that it did not pay any tax thereon. The taxpayer must attach the relevant contract, proof of receipt of such income, and a copy of the Tax Residency Certificate issued by International Tax Affairs Division (ITAD) and submitted to the foreign country when it obtained treaty benefits. However, if the taxpayer paid the corresponding tax after the filing of the RPT Form, the taxpayer must inform the tax examiner during audit of such fact and present the proof of payment thereof;
- n. The Philippine taxpayer is usually the one who bears the Income Tax on any income derived abroad. Thus, it has the right to know how much taxes it has to pay in the foreign country and the right to obtain any document related to the payment of foreign taxes, such as a copy of the return filed for said income and/or a copy of the ruling issued by the foreign tax authority;

BIR ISSUANCES

HIGHLIGHTS

***RMC No. 76-2020,
July 29, 2020***

This clarifies certain issues on the filing of BIR Form No. 1709 or Related Party Transaction (“RPT”) Form, and its attachments

- o. The BIR has the right to obtain the relevant information and documents from the Philippine taxpayer and may enforce all its rights to obtain the same within the bounds of the law. This is without prejudice to the BIR enforcing its right to obtain said information pursuant to existing and effective tax treaty. To be acceptable as proof, the document showing payment of foreign taxes or copy of foreign ruling duly issued by the relevant foreign tax authority must be duly authenticated or apostillized;
- p. The Tax Treaty Relief Application (TTRA) to be indicated in the RPT Form must be those filed with the ITAD relative to the income payments made by the Philippine taxpayer to its related party/ies.

***RMC No. 77-2020,
July 30, 2020***

This clarifies that the ECQ referred to under RMC No. 74-2020

The definition of ECQ under RMC No. 74-2020 is understood to be Enhanced Community Quarantine.

SEC ISSUANCES

HIGHLIGHTS

**SEC OGC Advisory
Dated July 03, 2020**

This informs on the reglementary periods in the filing of petitions, appeals, motions, and other pleadings under the 2016 Rules of Procedure of the SEC

Effective July 06, 2020, the reglementary periods in the filing of petitions, appeals, motions, and other pleadings under the 2016 Rules of Procedure of the SEC shall start to run

The OGC will further suspend the conduct of hearings and preliminary conferences in cases pending with the OGC or the Commission *En Banc*, and may, in its discretion, order the parties to file their respective position papers, in order to ensure and afford reasonable protection to the public and to the employees from the risk of contracting Covid-19.

**SEC Notice
Dated July 12, 2020**

This provides for the filing of Annual Reports during the temporary closure of the SEC Main Office until July 26, 2020

The SEC shall implement the following adjustments in the procedures and deadlines for the submission of Annual Financial Statements (“AFS”) and the General Information Sheet (“GIS”).

- Adjusted deadlines for filing of AFS

Corporations shall strictly observe the filing schedule based on their SEC registration or license numbers as follows:

Last Digit of SEC Registration/ License Number	Filing Schedule
1 and 2	July 1, 2, 3, 6, 7, 8, 9, 10 and August 10, 11, 12, 13, 14
3 and 4	July 13, 14, 15, 16, 17 and August 17, 18, 19, 20
5 and 6	July 20, 21, 22, 23, 24 and August 24, 25, 26, 27, 28
7 and 8	July 27, 28, 29, 30
9 and 0	August 3, 4, 5, 6, 7

- Adjusted deadlines for filing of GIS

Corporations which held annual stockholders’ meeting during the ECQ and MECQ in theNCR, will still have until August 31, 2020 to submit the GIS.

SEC ISSUANCES HIGHLIGHTS

SEC Notice

Dated July 12, 2020

This provides for the filing of Annual Reports during the temporary closure of the SEC Main Office until July 26, 2020

3. Filing via courier

Filing via courier shall only be through SENS facility at <https://sens.secexpress.ph> while the SEC Main Office remains closed, and a return copy may be requested as inclusion in their submission. Request for plain or authenticated copies of their AFS, GIS and other documents through the SEC Express System at <http://secexpress.ph> two months after receipt.

4. Filing via email submissions

Scanned copies of their duly signed and notarized reports may still be sent through the following email addresses:

Report	Email Address
AFS	ermdfs1@sec.gov.ph; ermdfs2@sec.gov.ph
GIS	mlmliwanag@sec.gov.ph; mtdmabuyo@sec.gov.ph

The documents shall be considered received on the date stated in the Acknowledgement Receipt (AC) to be sent through email. Printed copies may be submitted through courier or Philippine Postal Corporation (PHLPost), but the date of receipt shall be based on the AC.

5. Submission to the SEC extension offices

Corporations headquartered outside of NCR may continue filing their reports with the SEC Extension Offices, but the SEC – Cebu Extension Office shall be closed while Cebu City remains under ECQ.

6. Request for SEC Documents

Request for plain and authenticated copies of annual reports and other documents submitted shall be via online application only through the SEC Express System. The same shall be processed upon resumption of operations in the SEC Main Office on July 27, 2020.

Self-service processing in the SEC Main Office shall remain suspended until further notice.

BSP ISSUANCES

HIGHLIGHTS

***BSP Circular No. 1090,
July 20, 2020***

*This provides the
Implementing Rules
and Regulations of RA
10878, and the
corresponding
amendments to the
relevant provisions of
the MORB*

Section 334 of the MORB is created which reads:

“Pursuant to RA 10878, the Land Bank of the Philippines (LBP) shall allocate at least five percent (5%) of its regular loan portfolio for socialized credit to qualified small farmers, small fisherfolk and agrarian reform beneficiaries through qualified conduits.

Further, the LBP may offer and issue common and preferred shares of stocks to agrarian reform beneficiaries, small farmers and fisherfolk through their organizations, cooperatives; federations and cooperative banks; development partners and strategic investors such as multilateral and bilateral institutions; and rural banks and their associations.”

***BSP Circular No. 1091,
July 22, 2020***

*This provides the
exclusion of debt
securities held by
market from single
borrowers limit*

This Circular amends Section 362/342-Q of the MORB/MORNBF1 to read as follows:

“362/342-Q CREDIT EXPOSURE LIMITS TO A SINGLE BORROWER

xxx

Exclusions from loan limit.

xxx

Debt securities acquired as a result of market making activities pursuant to the rules and guidelines of the Securities and Exchange Commission and the market or exchange where such securities are traded and/or enrolled, Provided, That:

- 1) The market-making positions shall be taken up in the trading book in accordance with Sec. 6L4/6L4-Q on investment activities of Bangko Sentral Supervised Financial Institution (BSFI);
- 2) The market-making positions shall be properly identified and segregated from the BSFI's proprietary positions; and
- 3) The BSFI shall periodically monitor the market value of the subject debt securities and the number of days the securities have been outstanding from date of acquisition.

Provided, further, That the subject debt securities shall be excluded from the SBL for a period not exceeding the number of calendar days, as indicated below, from date of acquisition:

Calendar Days	Date of Acquisition
90 days	1 August 2020 – 31 July 2021
60 days	1 August 2021 onwards

BSP ISSUANCES

HIGHLIGHTS

***BSP Circular No. 1092,
July 27, 2020***

This provides the reduction of 100 basis points in the reserve requirement ratios of deposit and deposit substitute liabilities of thrift banks, rural banks and cooperative banks

Circular No. 1082 is revised to provides the new rates of required reserves against deposit and deposit substitute liabilities in local currency of banks effective reserve week July 31, 2020:

Reservable Liabilities	UBs/KBs	TBs	RBs/Coop Banks
Demand Deposits	12%	3%	2%
NOW accounts	12%	3%	2%
Savings Deposits (excluding basic deposit accounts)	12%	3%	2%
Time Deposits, Negotiable CTDs, Long-term Non-negotiable Tax Exempts CTDs	12%	3%	2%
xxx	xxx	xxx	xxx
Deposit Substitutes (DS)	12%	3%	NA
xxx	xxx	xxx	xxx

***BSP Circular Letter
No. 2020-035,
July 27, 2020***

This provides the extension of deadline to comply with the DIGICUR, implementation of targeted financial sanctions and the accompanying Sanctions Guidelines, and the Question-and-Answer document on the Anti-Terrorism Act of 2020

This Circular also provides that the deadline for compliance with the requirements of AMLC Regulatory Issuances A, B, and C No. 2, Series of 2018, otherwise known as DIGICUR, is extended from April 13, 2021 to September 30, 2021.

BSP ISSUANCES

HIGHLIGHTS

**BSP Circular No. 1092,
July 27, 2020**

This provides the reduction of 100 basis points in the reserve requirement ratios of deposit and deposit substitute liabilities of thrift banks, rural banks and cooperative banks

Circular No. 1082 is revised to provides the new rates of required reserves against deposit and deposit substitute liabilities in local currency of banks effective reserve week July 31, 2020:

Reservable Liabilities	UBs/KBs	TBs	RBs/Coop Banks
Demand Deposits	12%	3%	2%
NOW accounts	12%	3%	2%
Savings Deposits (excluding basic deposit accounts)	12%	3%	2%
Time Deposits, Negotiable CTDs, Long-term Non-negotiable Tax Exempts CTDs	12%	3%	2%
xxx	xxx	xxx	xxx
Deposit Substitutes (DS)	12%	3%	NA
xxx	xxx	xxx	xxx

**BSP Memorandum
M-2020-055,
July 11, 2020**

This provides the guidelines on the electronic submission of the Annual Report and Audited Financial Statement beginning 2019 which shall be observed by banks

Submission Guidelines:

1. Banks shall electronically transmit in PDF the AR and AFS beginning with the 2019 AR and AFS to the Department of Supervisory Analytics (DSA) as provided under the memoranda.
2. Banks shall apply the following prescribed format for the subject as provided under the memoranda.
3. Banks shall only use e-mail addresses officially registered with the DSA in electronically submitting reports.
4. Banks that are unable to electronically transmit the AR and AFS may use any portable storage device and submit the same through messengerial or postal services within the prescribed deadline.

BSP ISSUANCES

HIGHLIGHTS

***BSP Memorandum
M-2020-057,
July 21, 2020***

This provides the amendments to the operational relief measures for BSP-supervised financial institutions

The additional operational relief measures that are available to BSFIs are as follows:

1. Increase in the single borrower's limit.
2. Relaxation in the maximum penalty that may be imposed for reserve deficiencies.
3. Relaxation of the notification requirements related to changes in banking days and hours.
4. Relaxation of the notification requirements on the temporary closure of bank branch/branch-lite units and BSFI offices/service units, including their head office.
5. Relaxation in the regulations governing the submission of reports and other documents to the BSP-Financial Supervisor Sector.
6. Extension in the period of compliance with BSP supervisory requirements.

***BSP Memorandum
M-2020-060,
July 24, 2020***

This provides the guidelines on the electronic submission of the Annual Report and Audited Financial Statement beginning 2019 which shall be observed by Non-Bank BSFIs

Submission Guidelines:

1. BSFIs shall electronically transmit in PDF the AR and AFS beginning with the 2019 AR and AFS to the Department of Supervisory Analytics (DSA) as provided under the memoranda.
2. BSFIs shall apply the following prescribed format for the subject as provided under the memoranda.
3. Covered Non-Bank BSFIs shall only use e-mail addresses officially registered with the DSA in electronically submitting reports.
4. Covered Non-Bank BSFIs that are unable to electronically transmit the AR and AFS may use any portable storage device and submit the same through messengerial or postal services within the prescribed deadline.

IC ISSUANCES HIGHLIGHTS

***IC Circular Letter
CL-2020-77,
July 7, 2020***

This provides the supplemental guidelines on annual reporting of business process outsourcing activities

The written annual reports required to be submitted shall only include outsourcing agreements/contracts that are related to the conduct of insurance or reinsurance business. Said annual reports shall not include outsourcing agreements/contracts that are only incidental or unrelated to the conduct of insurance or reinsurance business.

The written annual reports required to be submitted shall include the following information:

1. Identities of the contracting parties;
2. Dates of the execution of the outsourcing agreements/contracts;
3. Nature of the activities outsourced; and
4. Period of the outsourcing agreements/contracts.

***IC Ruling ICR-2020-06,
July 9, 2020***

This provides clarification on IC Circular Letter No. 2020-61 reportorial requirement deadlines and their applicability

The following items or reports needed to be submitted to the IC on or before January 31 of the following year:

1. List of External Auditor's clients;
2. Copies of engagement contracts; and
3. Summary of External Auditor's clients that have pre-terminated engagements.

Lastly, reports on matters discovered that affect the financial condition of the regulated entities shall be submitted fifteen (15) calendar days after the date of the discovery of the materials finding. If there is none to report, the External Auditor shall submit within 15 calendar days after the close of the audit engagement a notarized certification that there is none to report.



MANDATORY RELATED PARTY DISCLOSURE

By
Irwin C. Nidea, Jr.

The BIR is finding a way to capture related party transactions (RPT) by imposing mandatory tax filing of a BIR Form where taxpayers are required to disclose all RPTs. Revenue Regulation (RR) 19-2020 acknowledged that “transactions between related parties have become complex and have been subject to abuse by taxpayers with intent to evade taxes by concluding transactions between them at unreasonable prices.” By mandating the filing of BIR Form 709 every year, as an attachment to the Annual Income Tax Returns, taxpayers are now left with no choice but to comply.

What information must taxpayers disclose?

According to the RR, the required disclosures must be made separately for each of the following categories: (i) the parent company; (ii) entities with joint control or significant influence over the entity; (iii) subsidiaries; (iv) associates; (v) joint ventures in which the entity is a joint venturer; (vi) key management personnel of the entity or its parent; and (vii) other related parties.

By

Irwin C. Nidea, Jr.

The RR also provides that for each of the category mentioned above, the following information shall be provided: (i) the amount of the transactions; (ii) the amount of outstanding balances, including commitments, and their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement, and details of any guarantees given or received; (iii) provisions for doubtful debts related to the amount of outstanding balances; (iv) the expense recognized during the period in respect of bad or doubtful debts due from related parties.

This information will be used by the BIR to assess the total value of related party transactions and the nature of the transactions. The loan and debt disclosures for example, will be used to test if the company imposed interest rate at arm's length.

It is also required that the nature of transactions is described in detail. The "business overview of the ultimate parent company" include the profile of the multinational group of which the taxpayer belongs, along with the name, address, legal status and country of tax residence of each of the related parties with whom intra-group transactions have been entered into by the taxpayer, and ownership linkages among them.

On the other hand, the "functional profile" shall include a broad description of the business of the taxpayer and the industry in which it operates, and of the business of the related parties with whom the taxpayer has transacted.

The following documents must also be attached: a) certified true copy of the relevant contracts or proof of transaction; b) withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR; c) proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident; and d) certified true copy of Advance Pricing Agreement, if any; and e) any transfer pricing documentation.

The BIR wants to know the relationship between parent and sister companies, the extent of their contribution to each other's businesses in terms of capital, management and control.

Why is the BIR mandating the filing of BIR Form 1709? It is understandable that the first document that is examined by the BIR to identify correct tax payment is the annual income tax return and financial statements. But these are not enough to identify transfer pricing compliance. By making disclosure mandatory through a BIR Form, taxpayers are now at

MANDATORY RELATED PARTY DISCLOSURE

By

Irwin C. Nidea, Jr.

risk of a criminal penalty if what are stated in the said tax return are false. The BIR is hoping that for fear of criminal prosecution, taxpayers will now think twice of not complying with the correct transfer price in its related party transactions.

When is BIR Form 1709 due for filing? The RR states that the Regulations shall take effect after fifteen (15) days following its publication in a newspaper of general circulation. So, if it was published on July 8, 2020, it will be effective on July 23, 2020. Thus, all Annual Income Tax Returns that will be filed starting July 23, 2020 must already attach BIR Form 1709.

What if a taxpayer fails to file BIR Form 709? The RR states that any violation of the provisions of this issuance shall be subject to penalties provided the Tax Code. It means failure to file a return which is at least equivalent to 1-year imprisonment.

The BIR is trying to catch up with the rest of the world in terms of transfer pricing compliance by using BIR Form 1709 as a tool. Taxpayers must take this seriously. This would require all conglomerates to tighten their controls on transfer pricing between their affiliates. Failure to do so would mean a domino of tax assessment falling one after the other.

For inquiries on the article, you may call or email

ATTY. IRWIN C. NIDEA, JR.

Senior Partner

T: +63 2 403 2001 loc. 330

irwin.c.nideajr@bdblaw.com.ph

THE BDB TEAM

OUR EXPERTS



BENEDICTA DU-BALADAD

Founding Partner, Chair & CEO
T: +63 2 403 2001 loc. 300
dick.du-baladad@bdblaw.com.ph



FULVIO D. DAWILAN

Managing Partner
T: +63 2 403 2001 loc. 310
fulvio.dawilan@bdblaw.com.ph



IRWIN C. NIDEA, JR.

Senior Partner
T: +63 2 403 2001 loc. 330
irwin.c.nideajr@bdblaw.com.ph



RODEL C. UNCIANO

Partner
T: +63 2 403 2001 loc. 140
rodel.unciano@bdblaw.com.ph



LINO ERNIE M. GUEVARA

Special Counsel
T: +63 2 403 2001 loc. 160
ernie.guevara@bdblaw.com.ph