

## 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).

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### PAGE NOS.

#### Highlights for May 2021

1

#### Significant Regulatory Issuances

- BUREAU OF INTERNAL REVENUE 2-29
- SECURITIES AND EXCHANGE COMMISSION 30-32
- BANGKO SENTRAL NG PILIPINAS 33
- INSURANCE COMMISSION 34-37

#### Published Article

- NEW GUIDELINES IN THE AVAILMENT  
OF TAX TREATY BENEFITS 38-40

#### OUR EXPERTS

- THE PERSONALITIES 41

# HIGHLIGHTS for May 2021

# HIGHLIGHTS

## BIR ISSUANCES

- **RR No. 1-2021, April 8, 2021** – Implements the tax incentives and fee privileges for the procurement, importation, donation, storage, transport, deployment, and administration of the COVID-19 vaccines under RA No. 11525 (COVID-19 Vaccination Program Act of 2021).
- **RR No. 2-2021, April 8, 2021** – Amends certain provisions of RR No 2-98 to implement the amendments introduced by CREATE to the NIRC of 1997, relative to the Final Tax on certain passive income.
- **RR No. 3-2021, April 8, 2021** – Prescribes the Rules and Regulations to implement Section 3 of CREATE, amending Section 20 of the NIRC of 1997, as amended.
- **RR No. 4-2021, April 8, 2021** – Implements the provisions on value-added tax (VAT) and percentage tax under CREATE.
- **RR No. 5-2021, April 8, 2021** – Implements the new income tax rates on the regular income of corporations, on certain passive incomes, including additional allowable deductions from gross income of persons engaged in the business of profession pursuant to CREATE.

## SEC ISSUANCES

- **SEC Notice dated March 25, 2021** – The deadline for submission of the 2020 Annual Reports for the calendar year ended December 31, 2020, has been extended from April 15, 2021 to May 17, 2021.
- **SEC Memorandum Circular No. 7, Series of 2021, April 23, 2021** – This provides for the rules for the calling of special stockholders' meetings of publicly-listed companies.

## BSP ISSUANCES

- **BSP Memorandum No. M-2021-025, April 23, 2021** – An Independent Director ID of a BSFI may only serve as such for a maximum non-extendible cumulative term of nine (9) years.

## IC ISSUANCES

- **IC CL- 2021-23, March 30, 2021** – This provides guidelines on the online submission of the 2020 audited financial statements and attachments.
- **IC CL-2021-30, April 13, 2021** – This amends CL No. 2021-24, on the extension of periods for filing and submission of regulatory documentary requirements of all non-life insurance and professional reinsurance companies.
- **IC CL-2021-32, April 13, 2021** – This provides additional guidelines on the electronic submission of the 2020 AS.
- **IC LO No. 2021-09, April 20, 2021** – An entity engaged in real estate development and foreign remittance transactions may engaged in the insurance brokerage business.

## BIR ISSUANCES HIGHLIGHTS

### **RMC No. 45-2021, April 5, 2021**

This extends the deadline of (a) filing of replies, documents, letters, and correspondences in relation to ongoing BIR audit investigations that fall due on April 5, 2021, and during the ECQ period and (b) VAT refund applications of the following taxpayers:

- (1) Taxpayers registered with RDOs in NCR Plus areas; and
- (2) Other registered taxpayers outside NCR Plus who have transactions with any BIR office within the NCR Plus.

The extended deadlines are:

Letters/Correspondence	Extended Deadline
Position Paper and Supporting Documents in Response to Notice of Discrepancy (NOD)	30 days from the lifting of ECQ
Reply and Supporting Documents in Response to the Preliminary Assessment Notice (PAN)	15 days from the lifting of ECQ
Protest Letter in Response to the Final Assessment Notice /Formal Letter of Demand (FAN/FLD)	30 days from the lifting of ECQ
Transmittal Letter and Supporting Documents in relation to Request for Reinvestigation	30 days from the lifting of ECQ
Request for Reconsideration to the Commissioner of Internal Revenue (CIR) on Final Decision on Disputed Assessment (FDDA)	30 days from the lifting of ECQ
Submission of Documents in Response to <i>Subpoena Duces Tecum</i>	15 days from the lifting of ECQ
Submission of Documents in relation to First, Second, and Final Notice	10 days from the lifting of ECQ
Other Similar Letters and Correspondences	30 days from the lifting of ECQ
Filing of VAT Refund with VCAD which falls due on April 12, 2021, per RMC No. 39-2021	15 days from the lifting of ECQ

## BIR ISSUANCES HIGHLIGHTS

### ***RMC No. 46-2021, April 6, 2021***

This clarifies the deadline for submission of Annual ITR for the taxable year ended December 31, 2020.

The deadline for filing of the Annual ITR for the taxable year ended December 31, 2020, and payment of taxes due thereon is not extended and remains to be on April 15, 2021.

The return may, however, be amended on or before May 15, 2021 without the imposition of increments. Provided that, a taxpayer whose amended returns will result in overpayment of taxes paid can opt to: (1) carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding period; or (2) file for a refund.

Further, pursuant to RA No. 8792 or the Electronic Commerce Act of 2000, all tax returns, attachments, and documents identified in this Circular can be signed by the taxpayer or its authorized officer or signatory through an **electronic signature**, which shall be deemed equivalent to an actual or “wet signature” for filing purposes.

### ***RMC No. 50-2021, April 8, 2021***

This prescribes the guidelines in the filing and payment of Annual ITR by non-individual taxpayers for the taxable year ending July 31, 2020 to June 31, 2021, which was affected by the passing of RA No. 11534 or also known as the “Corporate Recovery and Tax Incentives for Enterprises Act” (CREATE).

Non-individual taxpayers, whether eFPS or Non-eFPS Filers shall use the Offline eBIRForms Package v7.9 (eBIRForms) in filing their Annual ITR, which is available for download from the following sites:

- (1) [www.bir.gov.ph](http://www.bir.gov.ph); and
- (2) [www.knowyourtaxes.ph](http://www.knowyourtaxes.ph)

The automatic computation of tax due has been disabled and the taxpayer shall indicate the rate of tax applicable based on the matrix below, depending on the taxable period of the taxpayer:

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 50-2021,  
April 8, 2021**

Transitory Rates				
Annual Accounting Period (Transition TY 2020)	Regular Corporate Income Tax Rates	Other Domestic Corporation with Net Taxable Income ≤5M and Total Assets ≤100M, Exclusive of Land	MCIT	Proprietary Non-Profit Educational Institutions /Hospitals
	30% / 25%	30% / 20%	2% / 1%	10% / 1%
FY 7-31-20	29.58%	29.16 %	1.91 %	9.25%
FY 8-31-20	29.16	28.33	1.82	8.50
FY 9-31-20	28.75	27.50	1.73	7.75
FY 10-31-20	28.33	26.66	1.64	7.00
FY 11-31-20	27.91	25.83	1.55	6.25
CY 12-31-20	27.50	25.00	1.50	5.50
FY 1-31-21	27.08	24.16	1.41	4.75
FY 2-28-21	26.66	23.33	1.32	4.00
FY 3-31-21	26.25	22.50	1.23	3.25
FY 4-30-21	25.83	21.66	1.14	2.50
FY 5-31-21	25.41	20.83	1.05	1.75
FY 6-30-21	25.00	20.00	1.00	1.00

Payments of taxes due thereon, if any, shall be made thru:

- (a) Manual Payment – Non-eFPS Filers thru any authorized agent banks (AABs), or in the absence thereof, with Revenue Collection Officer under the jurisdiction of any RDO
- (b) Online Payment – Non-eFPS Filers thru:
  - Mobile Payment (Gcash/Paymaya); or
  - Landbank of the Philippines Link.Bizportal – for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card
  - Development Bank of the Philippines Tax Online – for taxpayers-holders of Visa/Master Credit Card and/or Bancnet ATM Debit Card
  - Union Bank Online Web and Mobile Payment Facility – for taxpayers who have an account with Union Bank
  - PESONet through LBP Link.BizPortal – for taxpayers who have an account with RCBC, Robinsons Bank, Union Bank, and BPI
- (c) Online Payment – eFPS Filers

## BIR ISSUANCES HIGHLIGHTS

### **RR No. 1-2021, April 8, 2021**

This implements the tax incentives and fee privileges for the procurement, importation, donation, storage, transport, deployment, and administration of the COVID-19 vaccines under RA No. 11525 (COVID-19 Vaccination Program Act of 2021).

This exempts from custom duties, VAT, excise tax, donor's tax, and other fees the (a) procurement; (b) importation; (c) donation; (d) storage; (e) transport; (f) deployment; and (g) administration of COVID-19 vaccines through the following COVID-19 Vaccination Program by:

- (1) National Government, through the Department of Health and the National Task Force Against COVID-19;
- (2) Any of the political subdivisions of the State; and
- (3) Private entities and international humanitarian organizations, such as the Philippine Red Cross.

The exemption is effective on January 1, 2021.

The following guidelines and procedures shall be followed and observed:

- (1) No VAT shall be imposed on the procurement of COVID-19 vaccines.
- (2) No VAT and excise tax shall be imposed on the importation of COVID-19 vaccines.
- (3) The importation of COVID-19 vaccines shall not be subject to the issuance of Authority to Release Imported Goods (ATRIG), and maybe released by the BOC without an ATRIG. This is without prejudice to the conduct of BIR post-investigation/audit.
- (4) No VAT shall be imposed on the services for the storage, transport, deployment, and administration of COVID-19 vaccines.

## BIR ISSUANCES HIGHLIGHTS

**RR No. 1-2021,  
April 8, 2021**

- (5) No donor's tax shall be imposed on the donation of COVID-19 vaccines to the entities mentioned, but subject to the ordinary rules of deductibility.
- (6) The tax incentives shall be applicable only if the vaccines are not intended for resale or other commercial use and shall be distributed without any considerations from persons to be vaccinated.

The following are the requirements to avail of the exemption:

- (1) Certified true copy (CTC) of the COVID-19 vaccine procurement agreement/multiparty agreement. The multiparty agreement on the procurement of LGUs and private entities shall include the DOH and the relevant supplier of the COVID-19 vaccine.
- (2) CTC of the COVID-19 vaccine's Certificate of Product Registration or Emergency Use Authorization issued by the FDA.
- (3) Sworn declaration from the taxpayer-buyer/importer/donee that the COVID-19 vaccines shall not be intended for resale or other commercial use and shall be distributed without any considerations from persons to be vaccinated. For private entities, a statement shall be included that any such vaccines shall be the sole and exclusive use of such entities and their related parties, if any, as discussed under Section 4 of RR No. 19-2020.
- (4) For COVID-19 vaccines donated to the entities mentioned, the following shall be presented:
  - a. For the national government and LGUs, a CTC of the duly accepted Deed of Donation; and
  - b. For private entities and international humanitarian organizations, a CTC of the duly accepted Deed of Donation and/or BIR Form No. 2322 (Certificate of Donation).

## BIR ISSUANCES HIGHLIGHTS

**RR No. 2-2021,  
April 8, 2021**

This amends certain provisions of RR No. 2-98 to implement the amendments introduced by CREATE to the Tax Code, relative to the final tax on certain passive income.

A. Final Tax on Passive Income

Income Recipient	Income	Final Withholding Tax Rate
Non-resident Aliens Engaged in Trade or Business in the Philippines	Winnings from PCSO amounting to more than P10,000.00 and lotto winnings	20%
Resident Foreign Corporation	Interest income derived from Depository Bank under the Expanded Foreign Currency Deposit Unit System (EFCDU)	15%
	Net capital gains realized during the taxable year from the sale, barter, exchange, or other disposition of shares of stock in a domestic corporation	15%
Non-Resident Foreign Corporation	All gross income derived from all sources within the Philippines	25%
	Dividends received from a domestic corporation	25% (or tax-sparing rate of 15%)
	Net capital gains realized during the taxable year from the sale, barter, exchange, or other disposition of shares of stock in a domestic corporation	15%



## BIR ISSUANCES HIGHLIGHTS

### **RR No. 2-2021, April 8, 2021**

B. Government Money Payments – subject to 1% withholding tax for the period from July 1, 2020 to June 30, 2023.

C. Transitory Provision – Any taxes withheld from person/entities where the withholding agents used the rate higher than what is imposed in these regulations, may be claimed as a tax refund by the withholding tax agents. In case the withholding agents or person/entities shall file the claim for refund on behalf of the payees, they must be duly authorized by the latter.

### **RR No. 3-2021, April 8, 2021**

This implements Section 3 of CREATE, amending Section 20 of the Tax Code, in relation to the submission by the CIR of the needed tax-related information to the DOF for the grant of incentives.

Tax-related and pertinent information refers to tax returns and any amendments thereof, including those which can be associated with, directly or indirectly, to a particular taxpayer, regarding its business income, operations, style, or the work or apparatus of any manufacturer or producer.

All requests for tax-related and pertinent information of entities receiving incentives under Title XIII of the Tax Code shall be made upon the authority of the Secretary of Finance and shall be addressed to the CIR. All responses to these requests shall be coursed through the CIR.

Under no circumstances shall a revenue official or employee provide or make known, in any manner, official information or documents to the DOF, especially on information relative to the grant of incentives, without the prior written approval of the CIR.

The Secretary of Finance and relevant officers and employees in the DOF handling such specific information obtained from the CIR shall be liable for disclosure of tax-related information unless the taxpayer consents in writing to such disclosure.

## BIR ISSUANCES HIGHLIGHTS

**RR No. 4-2021,  
April 8, 2021**

This implements the provisions on VAT and percentage tax under CREATE.

### A. The following are VAT-Exempt Transactions:

#### (1) Sale of real properties:

- (i) Sale of residential lot valued at P1.5M and below; or
- (ii) House and lot and other residential dwellings valued at P2.5M, as adjusted in 2011 using the 2010 Consumer Price Index values.

Beginning January 1, 2021, the VAT exemption shall only apply to:

- (a) Sale of real properties not primarily held for lease in the ordinary course of trade or business;
- (b) Sale of real properties for socialized housing as defined by RA 7279; and
- (c) Sale of house and lot, and other residential dwellings with a selling price of not more than P2M.

#### (2) Sale, importation, printing, or publication of books, and any newspaper, magazine, journal, review bulletin, or any such educational reading materials covered by the UNESCO Agreement on importation of educational, scientific, and cultural materials, including the digital format thereof, provided that:

- (a) Such materials are not devoted principally to the publication of paid advertisements;
- (b) Such materials are compliant with the requirement set forth by the National Book Development Board pursuant to RA No. 8047.

#### (3) Sale or importation of prescription and medicine for:

- (i) Diabetes, high cholesterol, and hypertension beginning January 1, 2020; and
- (ii) Cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2021.

## BIR ISSUANCES HIGHLIGHTS

**RR No. 4-2021,  
April 8, 2021**

(4) Sale and importation of the following beginning January 1, 2021 to December 31, 2023:

(i) Capital Equipment, its spare parts, and raw materials necessary for the production of personal protective equipment (PPE) components for COVID-19 prevention;

(ii) All drugs, vaccines, and medical devices specifically prescribed and directly used for the treatment of COVID 19; and

(iii) Drugs for the treatment of COVID-19 as approved by the FDA for use in clinical trials, including raw materials directly necessary for the production of such drugs.

Provided that:

(a) The DTI shall certify that such equipment, spare parts, or raw materials for importation are not locally available or insufficient in quantity, or not in accordance with the quality or specification required;

(b) For item (ii), within 60 days from the effectivity of CREATE, and every 3 months thereafter, the DOH shall issue a list of prescription drugs and medical devices covered by this provision.

(c) For items (i) and (iii), the supplier/s or importer shall submit, for the purpose of availing the exemption, the following:

1. CTC of "License to Operate," issued to the manufacturer-buyer by DOH-FDA, authorizing the manufacture of medical grade PPE components and drugs for the treatment of COVID-19; and

2. "Sworn Declaration" from the manufacturer-buyer that the items shall be used for the manufacture of the PPE components and drugs for the treatment of COVID-19.

## BIR ISSUANCES HIGHLIGHTS

**RR No. 4-2021,  
April 8, 2021**

### B. Tax on Persons Exempt from VAT

Any person whose sale or receipts are exempt from payment of VAT under Section 109(1)(CC) of the Tax Code and who is not VAT-registered shall pay a tax equivalent to **3% of his gross sales or receipts** (effective July 1, 2020 until June 30, 2021, the rate shall be 1%). The following shall be exempt from 3% percentage tax:

- (1) Cooperatives; and
- (2) Self-employed individuals and professionals availing the 8% tax on gross sales and/or receipts and other non-operating income.

### C. Transitory Provisions

(1) A VAT-registered person who opted to register as non-VAT as a result of the additional VAT-exempt provisions, provided that it did not meet the threshold set under Section 109(1)(CC) of the Tax Code, shall:

- (a) Submit an inventory list of unused invoices and/or receipts as of the date of filing of the application for the update of registration from VAT to Non-VAT, indicating the number of booklets and its corresponding serial number; and
- (b) Surrender the said invoice and/or receipts for cancellation.

(2) The taxpayer shall treat the resulting excess taxes paid due to the inclusion in the items exempt from VAT or adjustment in percentage tax, as the case may be, in the following manner:

- (a) Unutilized VAT paid on local purchases and importation from their specified effectivity under RA No. 11534 on July 1, 2021 until the effectivity of these Regulations may be carried over to the succeeding taxable quarter/s or be charged as part of cost pursuant to Section 110 of the Tax Code.
- (b) Input VAT which is directly attributable to goods now classified as VAT-exempt may be allowed as part of the cost.
- (c) For input VAT that cannot be attributed to goods now classified as VAT-exempt, only a ratable portion thereof shall be charged to cost.

## BIR ISSUANCES HIGHLIGHTS

**RR No. 5-2021,  
April 8, 2021**

This implements the new income tax rates on the regular income of corporations, on certain passive incomes, including additional allowable deductions from gross income of persons engaged in business or profession pursuant to CREATE.

### A. Corporate Income Tax Rates

Type of Corporation	The higher between the "Regular" or "Minimum Corporate Income Tax (MCIT)" rates			
	Regular		MCIT	
	Rate	Effectivity	Rate	Effectivity
<b>Domestic Corporation</b>				
Domestic Corporations, in general	25%	July 1, 2020	1%	July 1, 2020 to June 30, 2023 July 1, 2023
			2%	
Net taxable income ≤ P5M <b>AND</b> Total assets ≤ P100M, excluding land	20%	July 1, 2020	1%	July 1, 2020 to June 30, 2023 July 1, 2023
			2%	
Proprietary Educational Institutions and Hospitals	1%	July 1, 2020 to July 30, 2023	N/A	N/A
	10%	July 1, 2023		
<b>Foreign Corporations</b> (on taxable income derived from all sources with the Philippines)				
Resident Foreign Corporation	25%	July 1, 2020	1%	July 1, 2020 to June 30, 2023 July 1, 2023
			2%	
Offshore Banking Unit (OBUs)	25%	Upon effectivity of CREATE	1%	Upon effectivity of CREATE to June 30, 2023 July 1, 2023
			2%	
Regional Operating Headquarters (ROHQ)	25%	January 1, 2022	1%	January 1, 2022 to June 30, 2023 July 1, 2023
			2%	
Non-Resident Foreign Corporation	25%	January 1, 2021	N/A	N/A

## BIR ISSUANCES HIGHLIGHTS

### **RR No. 5-2021, April 8, 2021**

In the case of proprietary educational institutions or hospitals, if the gross income from “unrelated trade, business or other activity” exceeds 50% of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed for domestic corporations shall be imposed on the entire taxable income.

GOCCs, agencies, and instrumentalities, except GSIS, SSS, HDMF, PHIC, and the local water districts shall pay the tax upon their taxable income as are imposed upon corporations or associations engaged in similar business, industry, or activity.

#### **B. Income Tax Rates on Certain Passive Incomes**

Type of Individual/ Corporation	Nature of Income	Rate	Effectivity
Non-Resident Alien Individual	Winnings from PCSO games > P10,000	20%	Upon effectivity of CREATE
	P10,000 and below	Exempt	
Domestic Corporation	Intercorporate Dividends (domestic and foreign source dividends)	From another domestic corporation – Exempt  From non-resident foreign corporation – 25% or 20%, as the case may be	For foreign-sourced dividends, these will be exempt from income tax upon the effectivity of CREATE, subject to certain conditions
Resident Foreign Corporation	Interest income from a depository bank under the EFCDU	15%	Upon effectivity of CREATE
	Capital gains from the sale of shares of stock not traded in the stock exchange	15%	Upon effectivity of CREATE
Non-resident Foreign Corporation	Gross income received from all sources within the Philippines	25%	January 1, 2021
	Intercorporate dividend from a domestic corporation, in general	25%/15%	January 1, 2021
	Capital gains from the sale of shares of stock not traded in the stock exchange	15%	Upon effectivity of CREATE

## BIR ISSUANCES

**RR No. 5-2021,  
April 8, 2021**

**C. Exemption from income tax of foreign-sourced dividends received by domestic corporations**

The following are the requisites:

- (1) The dividends actually received or remitted into the Philippines are reinvested in the business operations of the domestic corporation within the next taxable year from the time the foreign-sourced dividends were received or remitted;
- (2) The dividends shall only be used to fund the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, and infrastructure project; and
- (3) The domestic corporation holds directly at least 20% in value of the outstanding shares of the foreign corporation and has held the shareholdings uninterrupted for a minimum of 2 years at the time of the dividends distribution. In case the foreign corporation has been in existence for less than 2 years at the time of dividend distribution, the domestic corporation must have continuously held at least 20% in value of the foreign corporation's outstanding shares during the entire existence of the corporation.

To avail of the exemption, the domestic corporation shall:

- (1) Submit to the concerned BIR office within 30 calendar days from actual receipt of the remitted dividends a sworn statement/affidavit containing (i) the fact of actual receipt of such dividends; (ii) the amount and the source (NRFC) of such dividends, including their shareholdings in that NRFC and the holding period at the time of the dividends distribution, and (iii) a statement that they shall fully comply with the conditions of the exemptions above stated;
- (2) In the year of receipt of the dividend, attach to the Audited Financial Statements (AFS) an Independent Auditor Sworn Certification as to (i) the fact of actual receipt of the remitted dividends, (ii) the amount and the source (NRFC) of such dividends, including their shareholdings in that NRFC and the holding period at the time of the dividends distribution, (iii) the fact that the domestic corporation, thru its Board, has appropriated or has a plan to reinvest the dividends in its business operations to fund its working capital requirements, capital expenditures, dividend payments, investment in

# BIR ISSUANCES HIGHLIGHTS

# UPDATES

**RR No. 5-2021,  
April 8, 2021**

domestic subsidiaries, or infrastructure project, and (iv) if any amount has been disbursed, a statement that said disbursement complies with the said requirements.

Disclosure of dividends in the AFS which shall be attached to the Annual ITR to be filed in the year of receipt, as well as the amount of dividend, deemed exempt from income tax, shall be declared in reconciliation part of the said Annual ITR.

(3) In the immediately following taxable year, attach to the Annual ITR a Sworn Certification prepared and executed by an Independent Auditor on the utilization or non-utilization of the dividends received by the corporation. If the Certification will state non-utilization of the dividends received, the corresponding tax due on the unutilized dividends shall be declared as taxable income, subject to surcharges, interest, and penalty, if any.

**D. Improperly Accumulated Earnings Tax**

It shall no longer be imposed upon the effectivity of CREATE onwards. This shall apply to the entire taxable year for all fiscal year/years ending after the effectivity of CREATE.

**E. Additional Allowable Deductions from Gross Income for Business Persons**

Upon the effectivity of CREATE, an additional deduction from taxable income of 1/2 of the value of labor training expenses shall be allowed under the following:

(1) Incurred for development of enterprise-based trainees enrolled in Public Senior High Schools, Public Higher Education Institution or Public Technical and Vocational Institutions and duly covered by an apprenticeship agreement;

(2) For the additional deduction for enterprise-based training of students from Public Educational Institutions, the enterprise shall secure proper "certification" from DepEd, TESDA, or CHED; and

(3) Such deduction shall not exceed 10% of Direct Labor Wage.

**F. Non-recognition of Gain or Loss on Exchange of Property**

(1) No gain or loss shall be recognized on a corporation or on its stock or securities if such corporation is a party to a



## BIR ISSUANCES

### HIGHLIGHTS

**RR No. 5-2021,  
April 8, 2021**

reorganization and exchanges property in pursuance of a plan of reorganization solely for stock or securities in another corporation that is a party to the reorganization.

(2) No gain or loss shall also be recognized if a property is transferred to a corporation by a person, alone or together with others, not exceeding 4 persons, in exchange for stock or unit of participation in such a corporation of which as a result of such exchange, the transferor or transferors, collectively, gains or maintains control of said corporation: *Provided that*, stocks issued for services shall not be considered as issued in return for the property.

(3) Sale or exchanges of property used for business for shares of stocks covered shall not be subject to VAT.

(4) In all of the foregoing instances of exchange of property, prior BIR confirmation or tax ruling shall not be required for purposes of availing of the tax exemption. The concerned parties can implement the transaction covered, but is not limited to, the issuance of the CAR.

#### **G. Transitory Provisions**

(1) Interest arbitrage shall be computed using the applicable rate, as follows:

(a) Interest income subjected to final tax  $\div$  12

(b) Number of months applicable x (a) x 33.33% [*old arbitrage rate*]

(c) Number of months applicable x (a) x (20% or 0%, as the case may be) [*new arbitrage rate*]

(d) Add the computed interest arbitrage under items (b) and (c) above to get the amount to be deducted from the interest expense claimed to arrive at the allowable interest expense

## BIR ISSUANCES HIGHLIGHTS

**RR No. 5-2021,  
April 8, 2021**

The transitory rates for interest arbitrage applicable for TY 2020 for corporations under itemized deductions are as follows:

For the computation of Interest Arbitrage		
Annual Accounting Period (Transition TY 2020)	Corporations subject to Regular Rates	Other domestic corporations with net taxable income ≤ 5M & total assets ≤ 100M, exclusive of land
	30% / 25%	30% / 20%
FY 7-31-20	31.92%	30.25%
FY 8-31-20	30.83	27.50
FY 9-31-20	29.75	24.75
FY 10-31-20	28.67	22.00
FY 11-31-20	27.58	19.25
CY 12-31-20	26.50	16.50
FY 1-31-21	25.42	13.75
FY 2-28-21	24.33	11.00
FY 3-31-21	23.25	8.25
FY 4-30-21	22.17	5.50
FY 5-31-21	21.08	2.75
FY 6-30-21	20.00	0.00

(2) Income tax due shall be computed as follows:

(i) Regular Income tax

- (a) Divide the taxable income for the year by 12 months.
- (b) Multiply the number of months applicable to the old rate by the resulting monthly taxable income; then multiply by 30%.
- (c) Multiply by the number of months applicable to the new rate by the resulting monthly taxable income; then multiply by either 25% or 20%, as applicable.
- (d) Add the computed regular income tax under items (b) and (c).

(ii) MCIT

- (a) Divide the gross income by 12 months.
- (b) Multiply the number of months applicable to the old MCIT rate by the resulting monthly gross income; then multiply by 2%.

## BIR ISSUANCES HIGHLIGHTS

### **RR No. 5-2021, April 8, 2021**

(c) Multiply the number of months applicable to the new MCIT rate by the resulting monthly gross income; then multiply by 1%;

(d) Add the computed MCIT under items (b) and (c).

(iii) Compare the resulting figures under (i)(d) and (ii)(d), and the higher shall be the income tax due/payable.

For ease of computing the income tax due during the transition period, the following rates reflected in the matrix below may be used:

Transitory Rates				
Annual Accounting Period (Transition TY 2020)	Regular Corporate Income Tax Rates	Other Domestic Corporation with Net Taxable Income ≤ 5M and Total Assets ≤ 100M, Exclusive of Land	MCIT	Proprietary Non-Profit Educational Institutions /Hospitals
	30% / 25%	30% / 20%	2% / 1%	10% / 1%
FY 7-31-20	29.58%	29.16 %	1.91 %	9.25%
FY 8-31-20	29.16	28.33	1.82	8.50
FY 9-31-20	28.75	27.50	1.73	7.75
FY 10-31-20	28.33	26.66	1.64	7.00
FY 11-31-20	27.91	25.83	1.55	6.25
CY 12-31-20	27.50	25.00	1.50	5.50
FY 1-31-21	27.08	24.16	1.41	4.75
FY 2-28-21	26.66	23.33	1.32	4.00
FY 3-31-21	26.25	22.50	1.23	3.25
FY 4-30-21	25.83	21.66	1.14	2.50
FY 5-31-21	25.41	20.83	1.05	1.75
FY 6-30-21	25.00	20.00	1.00	1.00

## BIR ISSUANCES HIGHLIGHTS

**RR No. 6-2021,  
April 14, 2021**

This prescribes the additional guidelines for implementing the tax provisions of the PERA Act of 2008, effectively amending pertinent provisions of RR No. 17-2011.

### A. Submission of Reports by PERA Administrators

The following reports shall be submitted by the PERA Administrators through the PERASys administered by the BSP and forwarded to the BIR for approval of the PERA Processing Office, through the ePERA system:

Name of Report	Due Date of Submission
Quarterly Report on PERA Contributions	Not later than the 15th day following the close of every quarter
Quarterly Report on PERA Distributions/Early Withdrawals/Terminations	Within 60 days following the end of the quarter of the date of termination or withdrawal
Annual Report on PERA Contributions	Within 60 days from the close of the calendar year
Annual Report on PERA Distributions/Early Withdrawals/Terminations	Within 60 days from the close of the calendar year
Alphalist of PERA Contributors	Within 60 days from the close of the calendar year

### B. Processing and Issuance of PERA-TCC

The PERA-Tax Credit Certificate (TCC) refers to the document evidencing the amount of tax credit equivalent to 5% of the total amount of qualified PERA contributions made in a year. The application for PERA-TCC shall be filed online thru the PERASys by the PERA Administrator within 60 days from the close of the calendar year.

### C. Utilization of PERA-TCC

The PERA-TCC shall be used for the payment of income tax liabilities of qualified employees and self-employed contributors, while for qualified overseas Filipino contributors, the PERA-TCC can be used in the payment of any internal revenue taxes. The PERA-TCC shall reflect such restrictions.

In the case of an employee contributor, the PERA-TCC shall be submitted to the employer to apply the gross amount of the PERA-TCC in the annual year-end adjustments for computing the net withholding tax due of the contributor-employee.

## BIR ISSUANCES HIGHLIGHTS

**RR No. 6-2021,  
April 14, 2021**

In all cases, the PERA- TCC shall be surrendered and attached to the applicable tax returns.

The duly received copies of the tax returns, together with copy/ies of the PERA-TCC and the other prescribed attachments shall be submitted to the concerned RDO.

### D. Remittance of Penalties on Early Withdrawal of PERA

The penalties of 5% and 20% for early withdrawal of qualified contribution prescribed under RR No. 10-2016 shall be deducted by the PERA Administrator from the PERA account prior to its release of payment of withdrawal by the contributor, which shall be remitted using online filing and payment facilities:

Penalty	BIR Form No.	In the name of	Deadline of Payment/Remittance
5% Tax Credit availed for the entire period of PERA	0605	Qualified Contributor	On or before the last day of the month following the close of the calendar quarter during which the deduction was made.
20% of Total Income earned from the time of its opening up to the time of withdrawal	1601F	PERA Administrator	

**RMC No. 52-2021,  
April 14, 2021**

The running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdictions of Metro Manila, Bulacan, Cavite, Laguna, and Rizal while the ECQ (March 29, 2021 to April 11, 2021) is in effect, including any extension/s thereof, and for 60 days thereafter. The suspension of the running of the Statute of Limitations shall apply with respect to the issuance and service of assessment notices, warrants and enforcement, and/or collection of deficiency taxes.

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

This addresses the frequently asked questions regarding the submission of BIR Form No. 1709 (RPT Form), and the preparation of Transfer Pricing Documentation (TPD), following the amendment of RR No. 19-2020 by RR No. 32-2020.

**Q1: Who are required to accomplish and file an RPT Form?**

**A1:** A taxpayer is required to file an RPT Form if the following conditions are present:

1. it is required to file an Annual Income Tax Return (AITR);
2. it has transactions with a domestic or foreign-related party during the concerned taxable period;
3. it falls under any of the following categories:
  - a) large taxpayers;
  - b) taxpayers enjoying tax incentives, *i.e.* Board of Investments (BoI)-registered and economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential income tax rate;
  - c) taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years; and
  - d) a related party that has transactions with (a), (b), or (c).

**Q2: Who is a large taxpayer?**

**A2:** Under RR No. I-1998, a large taxpayer is a taxpayer who has been classified and duly notified by the Commissioner of Internal Revenue (CIR) for having satisfied any or a combination of set criteria as prescribed in the said Regulations or any amendatory regulations. Notification may be made via registered mail, publication, or any other mode of service.

Therefore, a taxpayer who meets any of the set criteria but was not notified by the CIR cannot be considered a large taxpayer.

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

**Q3: Who are the taxpayers subject to preferential income tax rate?**

**A3:** In determining whether a taxpayer is subject to preferential income tax rate, reference must be made to the provisions of the Tax Code or other special laws on how these taxpayers are taxed as a whole and not on a per-transaction basis. Hence, a corporate taxpayer that is subject to regular corporate income tax but has transactions that are subject to preferential income tax rate under tax treaties or the Tax Code are not required to file an RPT Form, provided further that they do not fall under Section 2(a), (c) and (d).

Taxpayers referred to under Section 2(b) of RR No. 34-2020 include, but are not limited to, the following:

1. proprietary educational institutions and hospitals; and
2. regional operating headquarters.

International carriers, though subject to preferential rate under Section 28(A)(3) of the Tax Code or under the relevant tax treaty, are not required to file an RPT Form if they are either subject to tax based on their Gross Philippine Billings or gross revenues. The same rule applies to international carriers that are exempt from tax under the tax treaty or on the basis of reciprocity.

On the other hand, international carriers that are subject to tax on their profits from sources within the Philippines are required to file an RPT Form.

**Q4: If the taxpayer operating within the economic zone is subject to regular corporate income tax, is it required to file an RPT Form?**

**A4:** No, because only those enjoying tax incentives with respect to income tax (*i.e.*, Income Tax Holiday or 5% Special Tax on Gross Income) are required to file an RPT Form. However, if the taxpayer falls under Section 2(a), 2(c), or 2(d) of RR No. 34-2020, then it is required to file an RPT Form.

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

**Q5: Is a tax-exempt corporation required to file an RPT Form? How about a post-employment benefit plan?**

**A5:** Taxpayers who are exempt from income tax under Section 30 or similar provisions of the Tax Code or special laws are not required to file an RPT Form.

Also included in the classification of tax-exempt taxpayers are the regional or area headquarters and representative offices of foreign corporations that are not allowed by law to derive income from the Philippines.

Post-employment benefit plans are also not required to file an RPT Form if their related party transactions consist only of the contributions from their sponsor employers.

**Q6: What does the term “net operating losses” mean? Should it be based on the Audited Financial Statements (AFS) or AITR?**

**A6:** The net operating losses for income tax purposes should be the basis and not the amount reflected in the AFS.

**Q7: Should BIR registration fees, business permits, and real estate taxes paid for ordinary assets be considered in determining net operating losses?**

**A7:** Registration fees, business permits and licenses and taxes, except those enumerated under Section 34(C(1) of the Tax Code, are allowable deductions, and should therefore be considered in computing net operating losses.

**Q8: If a domestic party had transactions with a nonresident foreign related party that reported net operating losses for the current taxable year and the last two immediately preceding taxable years, is the former required to file an RPT Form?**

**A8:** Since the nonresident foreign related party is not required to file an RPT Form, the domestic party is likewise not required to file an RPT Form.

To determine whether a taxpayer is required to file an RPT Form pursuant to Section 2(d) of RR No. 34-2020, the transacting taxpayer must verify first if its related party is required to file an RPT Form for falling under categories a



## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

to c. Again, the conditions enumerated in Question No. 1 should be present.

**Q9: Is there a materiality threshold for reportable related party transactions?**

**A9:** The materiality threshold is only relevant in determining who are required to prepare a TPD. A taxpayer who is required to file an RPT Form must disclose all related party transactions irrespective of the amount.

**Q10: In filling out the RPT Form, would it be possible to report a lump-sum amount and not on a per-transaction basis?**

**A10:** If possible, similar transactions with the same related the party must be aggregated.

**Q11: What do we have to attach when filing the RPT Form?**

**A11:** The last paragraph of RR No. 34-2020 states that the TPD and other supporting documents shall no longer be attached to the RPT Form but shall instead be made available during the audit.

**Q12: Is a reasonable estimate of the related party transactions sufficient?**

**A12:** No less than the actual amounts of the related party transactions shall be declared in the RPT Form. Just like any other tax returns, the RPT Form likewise contains a perjury clause whereby the taxpayer or its duly authorized representative attests to the truthfulness of the facts stated therein.

**Q13: The short period return was supposed to be filed on December 15, 2020, but the filing thereof was extended by law or revenue issuances until January 31, 2021. Should the RPT Form accompany such a short period return?**

**A13:** No. The filing of the RPT Form shall only be mandatory for short period returns that are originally required by law or existing revenue issuances to be filed in 2021 and subsequent years.

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

**Q14: Suppose A Co. is not required to file the RPT but has satisfied the materiality thresholds under Section 3 of RR No. 34-2020. Is it required to prepare a TPD?**

**A14:** Sections 2 and 3 of RR No. 34-2020 are interrelated.

Section 2 enumerates the taxpayers who are required to file the RPT Form while Section 3 provides the conditions to be met by these taxpayers before they may be obliged to prepare a TPD.

The enumeration under Section 2 is exclusive such that all taxpayers not included therein are not required to file the RPT Form. A taxpayer who is required under Section 2 to file the RPT Form shall only prepare its TPD if it satisfies any of the conditions set out under Section 3. If the taxpayer is not required to file the RPT Form then it is not also mandated to prepare a TPD.

Nothing prevents any taxpayer, however, from preparing a TPD and presenting the same during the audit to prove that its related party transactions were conducted at arm's length. Though not required to prepare a TPD under RR No. 34-2020, it still needs to reasonably assess and prove whether its dealings with related parties adhere to the arm's length principle. After all, the burden of proof rests upon the taxpayer.

**Q15: Who are required to prepare a TPD?**

**A15:** The preparation of a TPD shall be mandatory if the taxpayer meets **any** of the following conditions:

(a) annual gross sales/revenue for the subject taxable period exceeding P150,000,000.00 **and** the total amount of related party transactions with foreign and domestic-related parties exceeds P90,000,000.00;

(b) sale of tangible goods involving **the same related party** exceeding P60,000,000.00 within the taxable year;

(c) service transaction, payment of interest, utilization of intangible goods or other related party transaction involving the same related party exceeding P15,000,000.00.00 within the taxable year; and

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

(d) if TPD was required to be prepared during the immediately preceding taxable period for exceeding (a) to (c).

**Q16: What is the difference between the related party transactions under Section 3(a) and (b) of RR No. 34-2020?**

**A16:** The related party transactions under Section 3(a) refer to transactions involving all related parties in general, while those under Section 3(b) relate to transactions with a specific related party only.

**Q17: Does the term "annual gross sales/revenue" pertain to the combined revenue from a related party and third-party transactions?**

**A17:** Yes, the annual gross sales or revenue referred to under Section 3(a) of RR No. 34-2020 is the amount of gross sales/receipts/revenues/fees reported in the AITR, irrespective of the source and identity of the other party to the transaction, *i.e.*, related or otherwise.

**Q18: In computing, the volume of related party transactions, does the taxpayer have to sum up the amounts received or paid with the outstanding receivable/payable? Should this be read as amounts that hit the income statement in addition to outstanding balances?**

**A18:** In computing the total amount of related party transactions with foreign and domestic-related parties, the following items shall be totaled:

(a) amounts received and/or receivable (trade receivables) from related parties during the taxable year;

(b) amounts paid and/or payable (trade payables) to related parties during the taxable year; and

(c) outstanding balances of loans and non-trade amounts due from/to all related parties (non-trade receivables and payables).

Any compensation paid to key management personnel, dividends, and branch profit remittances shall not be included in the computation.

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

**Q19: What are included in the phrase "other related party transaction"?**

**A19:** The intention of RR No. 34-2020 is to include in such term all other related party transactions not specifically enumerated in Section 3(b) of RR No. 34-2020.

**Q20: Should a share in the net income from associates or joint ventures be disclosed in the RPT Form?**

**A20:** Share in the net income of an associate, *etc.* is akin to dividends. Therefore, it is not required to be reported in the RPT Form.

**Q21: What is the effect of failure to supply material information?**

**A21:** The BIR requires the submission of a duly-accomplished RPT Form. If the taxpayer fails to provide any material information (*e.g.*, details of the related parties and related party transactions, *etc.*), the BIR will regard the RPT Form as not duly filed and the penalty for failure to file such information return will be imposed.

**Q22: What currency should be used in accomplishing the RPT Form and in preparing a TPD?**

**A22:** The RPT Form requires the amounts in foreign currency and its equivalent in local currency. However, if several currencies were used for the related party transactions, and it seems impractical to indicate all of them in the RPT Form, their equivalent in the local currency should instead be disclosed.

In all cases, the exchange rates to be used should be the rate at the transaction date.

The same rule applies to the preparation of a TPD.

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

**Q23: What are the incentives for taxpayers that complied with the requirements under RR No. 34-2020? Will they not be subjected to audit?**

**A23:** Through the RPT Forms submitted, the BIR will conduct an initial transfer pricing risk assessment, identify the high-risk taxpayers, and make an informed decision whether or not to conduct a transfer pricing audit of a particular entity or transaction. As to who will be subjected to transfer pricing audit will greatly depend on the results of such initial assessment.

This notwithstanding, the BIR still retains the right to conduct transfer pricing audits against taxpayers with related party transactions, irrespective of whether or not they are required to file the RPT Form and prepare a TPD.

When subjected to an audit, taxpayers who are not mandated to file the RPT Form and to prepare a TPD must still present sufficient evidence to prove that their related party transactions were conducted at arm's length.

**Q24: In order for the related party transactions covered by an Advance Pricing Agreement (APA) to be exempt from disclosure in the RPT form, does the APA need to be approved by the BIR?**

**A24:** Yes, the APA should be approved and accepted by the BIR. This may be in the form of a unilateral, bilateral, or multilateral APA.

The BIR is not obliged to accept any unilateral APAs entered into by a foreign taxpayer and the tax authority of the country of residence although it applies to an international transaction between such foreign taxpayer and its related party in the Philippines.

**Q25: Is the required disclosure under Section 4 of RR No. 34-2020 applicable to taxpayers who are not required to file an RPT Form and have already finalized their AFS for 2020 prior to its effectivity?**

**A25:** Taxpayers who are not required to file an RPT Form and have already finalized their AFS for the taxable year 2020 prior to the effectivity of RR No. 34-2020 are not expected to

## BIR ISSUANCES HIGHLIGHTS

**RMC No. 54-2021,  
April 17, 2021**

comply with the mandate of Section 4 thereof and cannot, therefore, be penalized for non-disclosure.

Section 4 only applies to the AFS that are required to be submitted after the effectivity of RR No. 34-2020.

**Q26: Does RR No. 34-2020 have a retroactive effect?**

**A26:** RR No. 34-2020 took effect immediately after its publication in a newspaper of general circulation on December 23, 2020. The provisions thereof shall only apply to the RPT Forms that are required to be submitted after its effectivity.

## SEC ISSUANCES HIGHLIGHTS

**SEC Memorandum  
Circular No. 5,  
Series of 2021,  
April 11, 2021**

The SEC extended the deadline for submission of 2020 Annual Reports for the calendar year ended December 31, 2020 of all publicly-listed companies, the issuer of registered securities, and public companies.

In view of the reimposition of the ECQ in some major parts of the country, the deadline for submission of the 2020 Annual Reports for the calendar year ended December 31, 2020, has been extended from April 15, 2021 to May 17, 2021, without prejudice to the schedule on the filing of AFS as may be required by the BIR.

**SEC Memorandum  
Circular No. 7,  
Series of 2021,  
April 23, 2021**

This provides for the rules for the calling of special stockholders' meetings of publicly-listed companies.

To promote good corporate governance and the protection of minority investors, the SEC resolved to issue the following rules:

- (1) Any number of shareholders of a corporation ("Qualifying Shareholders") who hold at least 10% or more of the outstanding capital stock ("Qualifying Shares") of a publicly-listed company (PLC) shall have the right to call for a special stockholders' meeting, subject to guidelines set under Section 49 of the RCC and other relevant regulations, which may be done physically or remotely through allowable means of remote communication.
- (2) The Qualifying Shareholders should have continuously held the Qualifying Shares for a period of at least one (1) year prior to the receipt by the Corporate Secretary of a written call for a special stockholders' meeting.
- (3) The call for a special stockholders' meeting shall be in writing, signed by all the Qualifying Shareholders, addressed to the Board of Directors and transmitted through the Corporate Secretary at least 45 days prior to the date of the special meeting, setting forth therein:
  - (i) The names of the Qualifying Stockholder(s) and their respective percentage of shareholdings, which must constitute at least 10% of the outstanding capital stock of the corporation;
  - (ii) The purpose of the call for a special stockholders' meeting, which must be stated with sufficient clarity, and must affect the legitimate interest of the stockholders and is germane to the stockholders' interest; *Provided, that*, the purpose should not include the removal of any director under Section 27 of the RCC;

## SEC ISSUANCES HIGHLIGHTS

### **SEC Memorandum Circular No. 7, Series of 2021, April 23, 2021**

- (iii) The proposed date and time of the requested special stockholders' meeting; *Provided, that*, no stockholder may call a special meeting within 60 days from the previous meeting of the same nature and where the same matter was discussed unless the company's by-laws provide otherwise, or the special meeting is approved by the Board of Directors; and
  - (iv) The proposed agenda items to be discussed during the special stockholders' meeting.
- (4) The Board of Directors shall determine if the objectives and conditions in the call for special stockholders' meeting are consistent with the requirements of this Memorandum Circular.

If found to be consistent, the Board of Directors shall issue the Notice to Convene the Special Stockholders' Meeting at least seven (7) days prior to the proposed date of the special meeting.

If found to be inconsistent, the Board of Directors shall send a written notice to the requesting stockholders indicating that a meeting cannot be called due to their failure to comply with the requirements of this Memorandum Circular, clearly setting forth the basis of such inconsistency, within 20 days from receipt of the request.

- (5) In the event that the Board of Directors fails to respond to the call for special stockholders' meeting within 20 days from receipt of the request, the Qualifying Stockholder/s may avail of the remedy provided under paragraph 7, Section 49 of the RCC.

The Qualifying Shareholders may avail of the same remedy if the Board of Directors refuses to call a meeting under number (4) above.

- (6) Any officer or agent of the corporation who shall refuse to allow a Qualifying Shareholder to exercise his/her right to call a meeting shall be liable under Section 158 of the RCC. If such refusal is made pursuant to a resolution or order of the Board of Directors, the liability under this section for such action shall be imposed upon the directors who voted for such refusal.

It shall be a defense to any action under this Memorandum Circular that the shareholder exercising any of these rights was



## SEC ISSUANCES HIGHLIGHTS

***SEC Memorandum  
Circular No. 7,  
Series of 2021,  
April 23, 2021***

not acting in good faith or in accordance with the requirements of this Memorandum Circular. However, delay in the processing of such requests shall be equivalent to refusal if the delay is solely caused by negligence on the part of the corporation.

The SEC may impose any or all of the sanctions provided under Section 158 of the RCC, if after due notice and hearing, it finds that any provision of this Memorandum Circular has been violated, or that any of the rights hereunder has been abused.

## BSP ISSUANCES

### HIGHLIGHTS

***BSP Memorandum  
No. M-2021-025,  
April 23, 2021***

Section 132/132-Q of the Manual of Regulations for Banks/Manual of Regulations for Non-Bank Financial Institutions (BSFI) provides, among others, that an Independent Director (ID) of a BSFI may only serve as such for a maximum cumulative term of nine (9) years. After which, the ID shall be perpetually barred from serving as ID in the same BSFI but may continue to serve as its regular director. The 9-year maximum cumulative term for IDs shall be reckoned from 2012.

All BSFIs are thus advised that pursuant to Monetary Board Resolution No. 371 dated March 31, 2021, the BSP shall not approve requests for exemption from the said term limit for IDs.

# IC ISSUANCES HIGHLIGHTS

# UPDATES

## **IC CL-2021-29, April 13, 2021**

This provides the guidelines on the electronic submission of the 2020 annual statements.

The IC, through the Circular, takes cognizance of the fact that the continued implementation of the ECQ poses specific challenges on the business operation and preparation of the regulatory requirements.

### **Annual Statements (AS) of the Pre-need Company and as of Trust Fund**

- A. Separate AS showing the financial condition of the pre-need company and AS of the Trust Fund for each type of plan shall be submitted in soft copy following the prescribed format (Annex "A-1" and "A-2" of the Circular);
- B. Scanned copy of the notarized sworn statement duly signed by the President, Vice President, Actuary, Treasurer, and Chief Accountant with attached documentary stamp tax should be attached; and
- C. The submitted AS shall include supporting documents necessary to authenticate the contents of the AS (Annex "B" of the Circular).

Any AS not in accordance with the prescribed format, with missing data/information, and incomplete attachments shall not be accepted. This does not, however, prevent the Commission to require other relevant information in the regulation, supervision, and monitoring of the operations and management of pre-need companies to ensure compliance with the Pre-Need Code, as well as existing laws, rules, regulations, and procedures.

### **Online Submission**

All AS and corresponding attachments referred to in this CL as Annex "B" shall be uploaded through the IC Online Uploading Portal via <https://onuploading.insurance.gov.ph/templates/login> only.

The documents in Annex "B" shall be arranged numerically according to the item numbers. Uploaded documents shall be encrypted and the checksum of each file/folder shall be certified and uploaded in the above portal to ensure the data integrity of the uploaded documents.

## IC ISSUANCES HIGHLIGHTS

**IC CL-2021-29,  
April 13, 2021**

### Deadline of Online Submission of the AS

The AS and corresponding attachments of the above-mentioned companies shall be submitted on or before **April 30, 2021, at 4:00 PM**. Submissions made **until May 31, 2021, 4:00 PM** may be accepted without the imposition of penalty for delayed submission.

### Review and Approval

The submission shall be considered official once an e-mail from the company's authorized representative, stating that the AS and corresponding attachments are completely uploaded, is received by the IC Examiner-in-Charge (EIC), copy furnished by the Division and Supervisors.

The EIC will evaluate the uploaded documents and if complete, the EIC will notify the company's authorized representative to proceed with the payment of the filing fee and penalty through email attaching an Order of Payment (OP). Incomplete uploaded AS and its attachments shall not be accepted, and the EIC will notify the company's authorized representative via email.

Payment of the filing fee and penalty (if any) shall be made within the date indicated in the OP either by cash/check in the Cashier Section of the IC Head Office, or Online Deposit through the Link.BizPortal using the following links:

1. <https://www.lbp-eservices.com/egps/portal/index.jsp>
2. <https://epaymentporatl.landbank.com/pay1.php?code=OW1NMEdm1UbHE1OHk5ZXlqZXBTLzJtOEFpS1PUmVqdkEVTIn cVFraz0>

The OP shall be valid until the next business day from the date indicated in the OP. Payment made via cash/check shall be proven by Official Receipt in the Pre-Need Divisions, while payment made via online deposit shall be proven by a screen-captured image of the Landbank-generated Transaction or Acknowledgment Receipt to the EIC via email to validate the completion of filing.

## IC ISSUANCES HIGHLIGHTS

### **IC CL-2021-29, April 13, 2021**

#### **Access of the Authorized Representative to the Online Uploading Portal**

The Online Uploading Portal shall be opened for uploading immediately upon effectivity of this CL and shall be closed at 4:00 **PM** as of April 30, 2021.

Submission of the AS and its attachments **AFTER** April 30, 2021 shall only be allowed in the said portal beginning **May 3, 2021 from 9:00 AM to 4:00 PM every working day.**

### **IC CL-2021-30, April 13, 2021**

This amends CL No. 2021-24, on the extension of periods for filing and submission of regulatory documentary requirements of all non-life insurance and professional reinsurance companies.

Following the recent surge in COVID-19 cases, tighter travel restrictions and strict business protocols due to the reimposition of the ECQ and Modified ECQ over Metro Manila and nearby areas make it difficult for non-life companies to operate and comply with the reportorial deadlines, the following guidelines are hereby promulgated:

#### **Online submission of Documents and Schedules to Support Ownership of Assets (CL No. 2021-16)**

Online submission of the documents and schedules to support ownership of the assets of all non-life insurance and professional reinsurance companies shall be extended until April 30, 2021.

#### **Submission of the 2020 AS and AFS (CL No. 2021-21)**

The filing of the 2020 AS, AFS, and the required attachments of all non-life insurance and professional reinsurance companies shall be submitted on or before April 30, 2021. However, submissions made until June 30, 2021 will be accepted without the imposition of penalty/ies for a late submission.

## IC ISSUANCES HIGHLIGHTS

### **IC CL-2021-32, April 13, 2021**

This provides additional guidelines on the electronic submission of the 2020 AS.

In view of the ECQ period and subsequent quarantine measure, the IC acknowledges the specific challenges on business operations and preparation of regulatory requirements.

The following additional guidelines are hereby promulgated:

1. The AS and corresponding attachments of the above-mentioned regulated entities shall be submitted on or before April 30, 2021, at 4:00 PM.
2. Submission made until **May 31, 2021, 4:00 PM** may be accepted without the imposition of penalty for delayed submission.

### **IC LO No. 2021-09, April 20, 2021**

This is a request for a legal opinion on whether an insurance broker may engage in non-insurance-related business by the Company that is mainly engaged in real estate construction, development and sales, and foreign currency remittance transactions. It asked for an opinion if it can venture into the insurance brokerage business and license thereto, but continuing its previous line of business.

Section 11 of IC CL No. 2018-52 prohibits an insurance broker or any of its officials, stockholders, or employees to engage in the insurance business as an insurer, insurance agent, reinsurer, or insurance adjuster. The reason for such prohibition is to avoid conflict of interests between the insurance broker's client, which is the insured, and the companies that insurance brokers deal with, which are the insurers.

Considering that the line of business of the Company is real estate development and foreign remittance transactions, it appears that the same is not among the prohibited activities or business for insurance brokers. Hence the IC is of the opinion that, insofar as the Insurance Code, as amended, as well as relevant laws and regulations, are concerned, the Company's proposed combination of lines of business do not pose any conflict and are not proscribed.

## Published Articles

Business Mirror

Tax Law for Business

INSIGHTS



### PRESUMED INCOME FROM UNRECORDED EXPENSES

By

Fulvio D. Dawilan

**T**he due process requirements in the issuance of deficiency tax assessment oblige a call for payment of deficiency tax to state the facts, the law, rules and regulations or jurisprudence on which the assessment is based. The right to be properly informed is a basic right of every taxpayer which cannot not be ignored, and noncompliance of which will result in an invalid assessment.

There are common items present in almost every assessment issued by our tax authority after the conduct of examination by its revenue officers. One of these is the tendency of the examiners to include an item of assessment described as “unaccounted source of cash”, “unaccounted expenses” or “unrecorded income due to unrecorded expenses/purchases”. These and similar other descriptions are used by the examiners interchangeably but the usual inference is the same - since there is unrecorded expense/cost/purchase, there is correspondingly an unrecorded income. And for that unrecorded income, deficiency income tax and VAT are accordingly imposed. These usually result from discrepancies arising from the comparison by the examiners of the information provided by the taxpayers in its various reports/submissions with the other reports of the same taxpayer or with that of third parties.

## PRESUMED INCOME FROM UNRECORDED EXPENSES

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# INSIGHTS

The merits of these tax impositions had already been dealt with in a number of cases. And the verdict is clear – no income tax and VAT assessment should be imposed on any finding for unrecorded expenses.

Court decisions had uniformly declared that there are three (3) elements necessary in the imposition of income tax. These are: (a) there must be gain or profit; (b) the gain or profit is realized or received, actually or constructively; and (c) it is not exempted by law or treaty from income tax. Income tax is assessed on income received from any property, activity or service. As such, in the imposition of or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an under-declaration of purchases or expenses. A finding of “unaccounted source of cash” without further proof, does not by itself result in the imposition of income tax. Tax authorities cannot assess a taxpayer with “undeclared income” solely on the basis of a finding that it has unaccounted or undeclared expenses.

To emphasize, this message from the decided cases involving this issue is clear – an unrecorded expense cannot give rise to deficiency income tax. Similarly it cannot give rise to a deficiency value-added tax.

In fact, the Courts had also repeatedly emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. Hence, even granting that there is an undeclared disbursement, the same is not prohibited by law. Simply relying on the fact that there is an undeclared disbursement, an imposition or assessment of the subject does not hold water.

I agree that it is the taxpayer that would even be prejudiced with any reduction to its deductible expense because this would necessarily mean an increase in tax base, and as the tax base increases, the amount of tax payable to the government would likewise increase. To add an undeclared expense to the income of the taxpayer would result in double burden to the taxpayer – first, when he fails to claim the same as deduction which results in the increase of his tax liability and second is when it is added to the income which also has the effect of further increasing tax liability.



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I would like to add that the term “purchases”, “expenses” or “costs” are not similar to “income”. There is therefore no rhythm in concluding that, with an under-declaration of purchases, expenses or costs, there would be a corresponding under-declaration of income. This goes without saying that even if there is indeed undeclared expense, it is not necessary that there is a corresponding income. This fact alone does not translate to under-declaration of an income.

With these cases declaring the inappropriateness of an assessment from alleged undeclared expenses/purchases, I believe this approach in determining the liabilities of taxpayers should be discontinued. This frees the resources of the parties and the Courts in resolving issues that had already been laid to rest by a number of decided cases.

I fully subscribe to the ratiocination of the Courts that in the imposition or assessment of income tax and VAT, there has to be an income, not when there is an undeclared disbursement. The purpose of an examination is to recompute the taxes due from the taxpayer. Hence, instead of adding the noted discrepancy to the taxable income, the proper approach is to deduct the unclaimed expenses/purchases from the taxable income as additional deductible expenses/costs, not the opposite.

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