



TMAP TAX UPDATES

SEP 16, 2020 TO OCT 15, 2020

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COURT OF TAX APPEALS DECISION

Service of FAN at old address not valid if BIR is already aware of the taxpayer's new address

Unisphere International, Inc. vs Commissioner of Internal Revenue

CTA EB No. 2121 re CTA Case No. 8782

September 23, 2020

In this case, the BIR served the final assessment notice (FAN) at the taxpayer's old address despite its knowledge of the taxpayer's new address. The BIR argued that the taxpayer failed to formally inform or notify them of the taxpayer's change of address. However, the court finds that despite the absence of a formal written notice of taxpayer's change of address, the BIR became aware of the taxpayer's new address as shown by several documents in its records. Thus, the FAN was considered invalid since it was not duly received by the taxpayer.

As also cited in the case, the Supreme Court already ruled the same in the case of Commissioner of Internal Revenue vs BASF Coating & Inks Phils., Inc., i.e. prior knowledge of the BIR of taxpayer's new address requires no further notification from the latter.

REVENUE REGULATIONS

Notice of Discrepancy to replace Notice of Informal Conference in tax assessments

Revenue Regulations No. 22-2020

September 16, 2020

The Notice of Discrepancy, which replaces the Notice of Informal Conference, will be issued to the taxpayer if he is found to be liable for deficiency taxes during investigation conducted by a revenue officer.

A Notice of Discrepancy is not yet a deficiency tax assessment. It only aims to fully afford the taxpayer with an opportunity to present and explain his side on the discrepancies found.

Based on the prescribed template for the Notice of Discrepancy, the taxpayer must be able to present and explain its side on the discrepancies noted by the BIR within 5 days from receipt of the notice. Should the taxpayer need more time to present documents, he may submit such documents after the discussion but within 30 days from receipt of the Notice of Discrepancy.

The discussion of discrepancies shall not extend beyond 30 days from the receipt of the notice. Within 10 days from the conclusion of the discussion of discrepancies, the investigating office shall endorse the case for review and approval for issuance of a Preliminary Assessment Notice if the taxpayer is still found to be liable for deficiency taxes.

A revised template of the Notice of Discrepancy was issued pursuant to RMC No. 102-2020.

Repeal of Tax on Shares of Stock sold or exchanged through IPO

Revenue Regulations No. 23-2020

September 30, 2020

Section 6 of Bayanihan to Recover as One Act (Republic Act No. 11494) or Bayanihan II repealed Section 127 (B) of the Tax Code, as amended. Hence, every sale, barter, exchange or other disposition of shares of stocks in closely held corporations through IPO shall no longer be subject to 1%, 2%, or 4% IPO tax upon effectivity of the Bayanihan II on September 15, 2020.

DST exemption of loan term extensions and credit restructuring pursuant to relief for loans falling due on or before December 31, 2020

Revenue Regulations No. 24-2020

September 30, 2020

Section 4 (uu) of Bayanihan II directs lenders to implement a one-time sixty (60)-day grace period for the payment of all existing, current and outstanding loans falling due, or any part thereof, on or before December 31, 2020.

The extensions of the maturity periods pursuant to the above relief shall be exempt from documentary stamp tax (DST). The DST exemption shall also apply to credit restructuring, micro-lending including those obtained from pawnshops, and extensions thereof, made on or before December 31, 2020.

Interbank loans and bank borrowings with maturity period of at least seven (7) days are not covered by the DST exemption.

NOLCO from 2020 and 2021 can be carried over for the next 5 years

Revenue Regulations No. 25-2020

September 30, 2020

Pursuant to Section 4 (bbbb) of Bayanihan II and as implemented under RR No. 25-2020, the net operating loss of a business or enterprise incurred for the taxable years 2020 and 2021 can be carried over as a deduction from gross income for the next five (5) consecutive taxable years following the year of such loss. Ordinarily, NOLCO can be carried over as deduction from gross income for the next three (3) consecutive years only.

For corporate taxpayers who are on fiscal year accounting period, taxable year 2020 and 2021 shall include all those corporations with fiscal years ending on or before June 30, 2021, and June 30, 2022, respectively.

The NOLCO shall be separately shown in the taxpayer's income tax return while the unused NOLCO shall be presented in the notes to financial statements in detail. The NOLCO for the taxable years 2020 and 2021 shall be presented in the notes to financial statements separately from the NOLCO for other taxable years. Failure to comply with the reporting requirement will disqualify the taxpayer from claiming the NOLCO.

Tax incentives for donations of computers and similar equipment for use in teaching and learning in public schools

Revenue Regulations No. 26-2020

October 06, 2020

All donations of personal computers, laptops, tablets, or similar equipment (i.e. mobile phone, printer) for use in teaching and learning in public schools for the period from September 15, 2020 to December 19, 2020, shall be entitled to the following tax incentives, pursuant to Bayanihan to Recover as One Act (Republic Act No. 11494) or the Bayanihan II:

1. Deductions from gross income for the amount of donation, subject to limitations under Section 34(H) of the Tax Code and the following conditions:
 - a. Deed of donation shall indicate in details the items donated, its quantity/ number and the amount/ value of the donation;
 - b. Deduction shall be availed of in the taxable year in which the expenses have been paid or incurred;
 - c. Taxpayer can substantiate deductions with sufficient evidence, such as sales invoice/s, delivery receipts and other adequate records showing the amount of expenses being claimed as deduction and proof or acknowledgment of receipt of the donated property by the recipient.

Donations shall be valued based on the actual acquisition cost. For equipment that have already been used, the depreciated value should be taken into consideration.

2. Exemption from donor's tax;
3. Exemption from value added tax (VAT) on importation, if imported by the Department of Education (DepEd), Commission on Higher Education (CHED), or Technical Education and Skills Development Authority (TESDA). If importer/ consignee is other than CHED or TESDA, the importer should present Deed of Donation duly accepted by these agencies for the importations to be VAT exempt. Moreover, the importation shall not be subject to the issuance of Authority to Release Imported Goods (ATRIG) but may be subject to post audit investigation.
4. Donations of equipment originally intended for sale or for use in the course of business by the donor shall not be treated as transactions deemed sale subject to VAT. Nonetheless, any input tax attributable to the purchase of donated equipment shall still be creditable against any output tax.

Ecozone locators are likewise covered by the above rules.

No prior determination or ruling from the BIR shall be required to avail of the tax incentives.

Further extensions on the deadline of filing for VAT refund claims and suspension of the 90-day period for processing of VAT refund

Revenue Regulations No. 27-2020

October 06, 2020

Application for VAT refund claims covering the following taxable quarters shall be due on the following dates:

Taxable quarter	Extended Deadline
Calendar quarter ending September 30, 2018	December 31, 2020
Fiscal quarter ending October 31, 2018	January 15, 2021
Fiscal quarter ending November 30, 2018	January 31, 2021
Calendar quarter ending December 31, 2018	February 15, 2021

The 90-day processing of VAT refund claims is likewise suspended during the effectivity of Bayanihan II or until the next adjournment of the 18th Congress on December 19, 2020.

In areas where the Enhanced Community Quarantine (ECQ) or the Modified Enhanced Community Quarantine (MECQ) is in force after December 19, 2020, the following shall be observed until lifting of the state of national emergency:

- Deadlines for the filing of VAT refund claims falling within the period of ECQ or MECQ shall be extended to 30 days after the lifting of the ECQ or MECQ;
- The 90-day processing period shall be suspended during the period of ECQ or MECQ, and shall resume 30 days after the ECQ or MECQ is lifted;
- In cases where the processing office is required temporary closure due to COVID-19 cases, the 90-day processing of VAT refund claims shall be suspended until the last day of the quarantine period for the affected processing office.

Tax exemption on the manufacture or importation of certain equipment, supplies or goods

Revenue Regulations No. 28-2020

October 15, 2020

Importation of healthcare equipment and supplies, including materials necessary to produce such equipment and supplies, and equipment for waste management approved by DENR, DOH and other concerned regulatory agencies shall be entitled to the following incentives:

1. Exemption from value added tax (VAT), duties, excise tax and other fees due on importation. Taxpayers availing of exemption must present a certification from Department of Trade and Industry that the imported equipment and supplies are not locally available or of insufficient quality and preference;
2. Exemption from the Authority to Release Imported Goods (ATRIG) requirement but may be subject to post audit investigation; and
3. Exemption from donor's tax if the imported articles are donated to or for use of the national government, any entity created by its agencies which is not conducted for profit or to any of its political subdivision. Moreover, the donation is subject to ordinary rules of deductions;

VAT on all covered and qualified shipments/importations that may have been paid from June 25, 2020 up to September 14, 2020 shall be refunded pursuant to Section 204(C) of the Tax Code in accordance with the existing procedures for refund of VAT on importation, provided that the input tax on the importations have not been claimed in the VAT returns.

Moreover, sale of inputs, raw materials and equipment necessary for the manufacture of essential goods of medical grade related to containment and mitigation of COVID-19, as determined by Food and Drug Administration —

Department of Health (FDA-DOH), whether locally sourced or imported by a registered manufacturer shall also be exempt from VAT. To avail of the exemption, suppliers shall submit the following:

- Certified true copy of "License to Operate", issued to the manufacturer-buyer by the FDA-DOH; and
- "Sworn Declaration" from the manufacturer-buyer that the items shall be used for the manufacture of essential goods of medical grade related to containment and mitigation of COVID-19.

Tax exemption of certain income payments

Revenue Regulations No. 29-2020

October 15, 2020

The following income payments shall be excluded from gross income and shall not be subject to income tax:

- a. Retirement benefits of officials and employees of private firms;
- b. COVID-19 Special Risk Allowance to both private and public health workers directly catering to or in contact with COVID-19 patients;
- c. Actual Hazard Duty Pay to Human Resources for Health (HRH) or any person temporarily hired to complement or supplement the current health workforce; and
- d. Compensation amounting to P15,000 to P1,000,000 to private and public health workers who have contracted COVID-19 in the line of duty or dies while fighting COVID19.

For retirement benefits, exemption will apply if the amount received is in accordance with a retirement plan duly registered with the BIR and the retiring employee or official is not re-employed by the same firm or its related parties within the succeeding 12-month period. The conditions will not apply for retirement benefits received pursuant to Section 2.78.1(B)(1) of RR 02-98, as amended.

If the re-employment will occur in 2020, the withholding tax due on the retirement pay will be recovered by adjusting the withholding tax for taxable year 2020. However, if the re-employment will happen in 2021 and within the 12 month period, the concerned employee shall pay the taxes due on the retirement benefits received within thirty (30) days from date of reemployment, or on the due date for the payment of the second installment payment of 2020 income tax (October 15, 2021), whichever comes later, without penalties.

The income payments shall be included in the Alphabetical List of Employees being submitted annually. A list of recipients shall be submitted not later than January 15, 2021 to the RDO or LTS having jurisdiction over the employer/ implementing government agency. The list shall include the names, TIN, nature of income paid, amount and date of payment attested by the authorized official of the employer/implementing government agency. Moreover, a list of employees who received retirement benefits but are re-employed within the 12-month period should be submitted by the concerned employers within 30 days from close of taxable quarters for the year 2021.

REVENUE MEMORANDUM CIRCULAR

Further extensions on the deadline of submission of BIR Form 1709 and supporting documents

Revenue Memorandum Circular No. 98-2020

September 15, 2020

Due to the continuing effects of COVID-19 pandemic, the submission of BIR Form 1709 and its required supporting documents as attachments to the Annual Income tax Return shall be extended as follows:

Annual Income Tax Return	Extended Deadline
For Fiscal Year Ending March 31, 2020 and April 30, 2020	December 29, 2020
For Fiscal Year Ending May 31, 2020 and June 30, 2020	January 31, 2021
For Fiscal Year Ending July 31, 2020 and August 31, 2020	March 01, 2021
For Fiscal Year Ending September 30, 2020 and October 31, 2020	March 31, 2021
For Fiscal Year ending November 30, 2020 and Calendar Year Ending December 31, 2020	April 30, 2021

Addendum to the list of VAT-exempt drugs/ medicines for diabetes, high-cholesterol and hypertension

Revenue Memorandum Circular No. 101-2020

September 25, 2020

The BIR published the Addendum to the List of VAT-Exempt Drugs for Hypertension, Diabetes and High Cholesterol (As of May 15, 2020) initially published per RMC 62-2020.

The detailed list of the inclusion and exclusion to the initial list of VAT exempt drugs and medicines for hypertension, diabetes, and high cholesterol can be accessed through the link below:

https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2020%20RMCs/RMC%20No.%20101-2020%20Addendum%20to%20the%20List%20of%20VAT-Exempt%20Drugs%20for%20Hypertension%20Diabetes%20and%20High%20Cholesterol.pdf

Registration of Overseas Filipino for purposes of opening a bank account in availing PERA

Revenue Memorandum Circular No. 103-2020

September 29, 2020

Overseas Filipinos who do not have Tax Identification Numbers (TIN) can secure the TIN required before they can open bank accounts and become eligible to invest in Personal Equity and Retirement Account (PERA), though the following manners:

1. Through authorized representative

Overseas Filipinos may secure their TIN manually, through their authorized representative by submission of the required documentary requirements specified under of RMC No. 57 - 2020. The application for TIN shall be filed at Revenue District Office (RDO) No. 39 - South Quezon City.

2. Via e-mail application by the taxpayer himself

Overseas Filipinos may personally submit application for TIN thru email at rdo_39css@bir.gov.ph by submitting the scanned copies of the following documentary requirements:

- a. Duly accomplished and signed BIR Form No. 1904
- b. Passport (Bio page, including date of exit/departure stamp, if applicable)
- c. In lieu of Special Power of Attorney, as proof of absence in the country and account opening with banks, Overseas Employment Certificate (OEC) issued by the Philippine Overseas Employment Administration (POEA); or any official document showing that he will earn or has earned income in a foreign country in the year of PERA Contribution;
- d. In case of legitimate spouse of the Overseas Filipino, the marriage certificate shall be submitted in addition to items (a) to (c) mentioned above.

Overseas Filipinos shall not be issued any TIN Card. For applications filed manually, the BIR Form No. 1904 duly stamped received indicating the TIN issued shall serve as proof of registration. On the other hand, for applications filed through email, the acknowledgment receipt/reply to the email is sufficient proof of receipt of such application.

Availability of BIR Form Nos. 2119 and 0622

Revenue Memorandum Circular No. 108-2020

October 06, 2020

In relation to the implementation of VAPP under Revenue Regulations No. 21-2020, the following forms are already available in the BIR website under the BIR Forms section:

- BIR Form No. 2119 – Voluntary Assessment and Payment Program (VAPP) Application Form
- BIR Form No. 0622- Voluntary Assessment and Payment Program (VAPP) Payment Form

However, the forms are not available in the electronic Filing and Payment System (eFPS) and electronic Bureau of Internal Revenue Forms (eBIRForms). Hence, all taxpayers shall use the manual PDF version of the form.

Payment of the tax due thereon shall be made through any Authorized Agent Bank (AAB) or Revenue Collection Officer (RCO) where the taxpayer is registered or having jurisdiction over the transaction. Payment through BIR electronic payment channels (e.g., G-Cash and PayMaya) is not allowable.

Clarifications on the proper modes of service of eLAs

Revenue Memorandum Circular No. 110-2020

October 06, 2020

An electronic Letter of Authority (eLA) must be served to the concerned taxpayer by the Revenue Officers authorized to conduct examination of books of accounts of the taxpayer.

The eLA shall be served to the taxpayer by personally delivering a copy of the eLA at his registered or known address or wherever he may be found. Personal or substituted service shall be done by the Revenue Officer (RO) assigned or any BIR employee as duly authorized for this purpose.

However, in cases when the concerned taxpayer or his authorized representative, or authorized officer in case of a non-individual taxpayer, could not be found in the registered address, the following rules on the modes of service of assessment notices provided under Revenue Memorandum Order No. 40-2019, shall be applied:

- Substituted service. This can only be resorted to when the party is not present at the registered or known address.
 - The eLA may be left at the party's registered address, with his clerk or a person having charge thereof.
 - If the known address is a place where the party's business activities are conducted, the eLA may be left with the clerk or with a person having charge thereof.
 - If the known address is a place of residence, the eLA may be left with a person of legal age residing therein.
 - If no person is found in the registered or known address or the taxpayer refuses to receive the eLA, the RO concerned shall bring a barangay official and two disinterested witnesses so that they may personally observe and attest to such absence or refusal. The original copy of the eLA shall be given to the barangay official.
- Service by mail shall be done by sending copy of the eLA through any of the following:
 - o registered mail with an instruction to the postmaster to return the mail to the sender after 10 days, if undelivered;
 - o reputable professional courier service; or
 - o ordinary mail, if no registry or reputable courier is available.

For eLAs served through personal or substituted service, the date of receipt, name and signature of the person acknowledging receipt or barangay officials/witnesses, as applicable, shall be indicated at the back of the duplicate copy of the eLA.

Personal service shall be complete upon actual delivery of the eLA to the taxpayer or his representative. Service by registered mail is considered complete upon actual receipt by the taxpayer or after 5 days from the date of receipt of the first notice of the postmaster, whichever date is earlier. Service by ordinary mail is considered complete upon the expiration of 10 days after mailing.

Service to the tax agent/practitioner, who is appointed or authorized by the taxpayer, shall be deemed service to the taxpayer.

Clarifications relative to Voluntary Assessment and Payment Program

Revenue Memorandum Circular No. 111-2020

October 15, 2020

The following clarifications were issued in relation to availment of Voluntary Assessment and Payment Program:

1. All persons, natural or juridical, including estates and trusts, are qualified to avail of the VAPP which covers calendar year 2018 and fiscal year 2018 ending in July, August, September, October and November 2018, as well as those ending in January, February, March, April, May and June 2019.

For one-time transactions (ONETT) of individuals and taxpayers on a calendar year basis, the VAPP covers all transactions from January to December 2018. For taxpayers on a fiscal year basis, the covered ONETT are those within their fiscal year 2018.

2. Availment of the VAPP should cover all the tax types to which the taxpayer is registered, including Withholding Taxes, except when the taxpayer is pursuing a claim for tax credit/refund, in which case, he can leave out the tax type for such claim. However, a taxpayer can avail of VAPP on ONETT only.
3. Taxpayers shall use BIR Form No. 2119 for the application and BIR Form No. 0622 for the payment of the corresponding voluntary tax. Payment shall be done to the Authorized Agent Bank (AAB)/Revenue Collection Office (RCO) where the taxpayer is registered or having jurisdiction over the transaction, as the case may be. Payment through e-payment channels (e.g., G-Cash and PayMaya) is not allowable.
4. Separate application and payment forms should be accomplished for availment of Income tax, VAT, Percentage Tax, Excise Tax, DST (Section 9.a) and Withholding Taxes (Section 9.b).
5. The application for VAPP on ONETT for sale of shares of stock not traded through the local stock exchange shall be filed with the BIR Office where the taxpayer-seller is registered.

Additional requirements that must be submitted are copies of the duly validated BIR Form No. 1707 - Capital Gains Tax Return (For Onerous Transfer of Shares of Stocks Not Traded Through the Local Stock Exchange) and BIR Form No. 2000-OT (Documentary Stamp Tax Declaration/Return - One-Time Transactions), Payment Forms and proofs of tax payments.

6. A copy of BIR Form No. 1606 - Withholding Tax Remittance Return shall be submitted as additional requirement for availment of VAPP for Creditable/Expanded Withholding Tax for onerous transfer of real property other than capital asset. If there are tax returns data which are different from those in the BIR's information system, the BIR-Integrated Tax System (ITS)-generated data will prevail over the taxpayer's copy, unless there is proof of error in encoding of the tax returns data.
7. Payment by check is acceptable, provided that check payments conform to the payment requirements of the BIR. Payment through Tax Remittance Advice (TRA) is not acceptable as payment under the Program since it cannot be considered as "cash". Only cash or all its forms are acceptable as payment under the VAPP.
8. "Gross sales" shall mean the sales/receipts/ revenues/fees net of sales returns, allowances and discounts per Annual Income Tax Return.
9. If there is no increase or decrease in the total taxes due for all tax types in 2018 compared to all taxes due in 2017, the voluntary tax payment shall be computed based on the "net increase of not more than 10%".
10. If the taxpayer is only in its first year of operation for 2018 and there are taxes due for the year per tax returns filed, the taxpayer can avail of the VAPP. The voluntary tax payment shall be computed based on the classification "net increase of more than 30%" since there is no tax payment to be considered for 2017.
11. Improperly accumulated earnings tax paid by a taxpayer should be included in the total taxes due for the purpose of computing the increase/decrease since it can be considered as Income Tax.
12. If the taxpayer's assessment on ONETT pertains only to the penalties, the voluntary payment shall be 5% of the basic tax paid.
13. In case the taxpayer paid Minimum Corporate Income Tax (MCIT) in 2017 and paid the normal Income Tax in 2018, the MCIT shall be the Income Tax due for 2017 while the annual corporate Income Tax due computed under the normal Income Tax before deducting any tax credits/payments shall be considered as the Income Tax due for 2018.
14. Excess tax credits from prior period/taxable year shall be considered in determining the Net VAT due. The reference to determine the VAT due for taxable years 2017 and 2018 is Line 25 — "Net VAT payable" in the quarterly VAT return. If the net VAT due is a negative amount, then the total taxes due for the year will not be reduced by the negative VAT amount.
15. A taxpayer who paid Percentage Tax or availed of the eight percent (8%) Income Tax rate despite having exceeded the threshold of Three Million Pesos (Php 3,000,000.00) can apply for the VAPP, provided that the VAT return will be filed and the VAT will be paid with the corresponding penalties after deducting the total Percentage Tax payments.

16. The basic deficiency tax payment shall only be added to the taxable period covered under Section 3 of RR No. 21-2020 for purposes of computing the increase/decrease in tax payments, which is taxable year 2018, that includes fiscal year ending July 2018 to June 2019. Basic deficiency tax payments in 2017 will not be added to the tax dues in 2017.
17. The waiver of refund is applicable only to claims for refund on erroneous payment. For taxpayers with claims for tax credit/refund, this shall constitute as a waiver of such claims under Section 12 unless they exclude from their availment the specific tax type for which they are pursuing the claim for tax credit/refund.
18. If the taxpayer would like to apply for the VAPP but declines to waive his right to claim for refund, he can leave out from the availment the tax type for said refund. Thus, the specific tax type pertaining to the refund on erroneous payment shall not be covered by the availment.
19. A taxpayer with a pending claim for tax credit/refund can avail of the VAPP, provided that the claim is not on erroneous payment for which the taxpayer has not waived his right to such claim. The processing of the claim shall be continued, even if the corresponding tax type is included in the availment.
20. A taxpayer who failed to withhold and remit withheld taxes in 2018 is qualified to avail of the VAPP under the condition that the amount not withheld and not remitted has to be paid first and the same shall form part of the total taxes remitted for 2018, which shall be the taxable base in determining the five percent (5%) required amount to be paid to avail of the benefits under the VAPP.
21. The Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) shall be computed based on the highest value among the selling price, zonal value and fair market value of the property.
22. The exception "with pending cases" does not include those who failed to comply with an issued Subpoena Duces Tecum (SDT) if no criminal case has been filed in court yet for failure to comply with the SDT.
23. A taxpayer with an on-going investigation or a duly issued but protested Final Assessment Notice (FAN) for 2017 and/or 2018 can avail of the VAPP, but the availment will not cover taxable year 2017. The amount on the FAN for the 2018 audit case will, in no way, affect the computation of the voluntary payment for VAPP.
24. FANs not protested in thirty (30) days from receipt but the same though not yet recorded as Accounts Receivable (since the dockets are not yet transmitted to the Collection Division of the Revenue Region/LT Collection Enforcement Division in the National Office) are also considered final and executory.
25. Taxpayers with duly issued but protested FANs can avail of the VAPP provided the FANs are for taxable year 2018, still under protest on or before the effectivity of VAPP regulations and all tax types of the taxpayer are covered in the availment.
26. Taxpayers who had been issued a Certificate of Availment (CA) should give a copy of the CA, Payment Form and proofs of payment to the concerned offices who are conducting audit, investigation and review of their case. If the taxpayer with FAN has a duly issued CA after availing of the VAPP, the assessment shall be cancelled through issuance of an Authority to Cancel Assessment by the authorized revenue official, in accordance with existing policies and procedures.
27. If the taxpayer availed of the VAPP, the electronic Certificate Authorizing Registration (eCAR) shall be issued within five (5) days from the issuance of the CA. In case of denial of the VAPP availment, the head of the processing office shall issue a letter informing the taxpayer of the denial and the reason(s) therefor.
28. A taxpayer who was notified to rectify the deficiencies in the VAPP availment or to pay the additional voluntary tax but fails to do so within ten (10) days from receipt of the notification can no longer qualify for the benefit of the VAPP.
29. In case the taxpayer's availment was denied and rendered invalid and the taxpayer was subjected to audit/investigation under existing rules and regulations, upon authorization and approval of the Commissioner of Internal Revenue, any voluntary tax paid by the taxpayer per BIR Form No. 0622 shall constitute as payment of the deficiency tax assessments for taxable year 2018, provided, that such payment includes the specific tax types and taxable period covered by the assessment notice.

30. If the taxpayer paid the tax for the VAPP on or before December 31, 2020 but submits his/her/its application after the deadline, this can be considered as availment within the deadline. However, the validity of the availment will depend upon the documents submitted and the amount of voluntary payment.

REVENUE MEMORANDUM ORDER

New and modified ATCs for excise tax on automobiles and non-essential goods

Revenue Memorandum Order No. 32-2020

October 06, 2020

To properly identify and monitor tax collection from excise taxes on automobiles and non-essential goods, in connection with the implementation of RA No. 10963, the following new and modified alphanumeric tax codes (ATCs) was included in BIR Form 2200-AN (Excise Tax Return for Automobiles and Non-Essential Goods):

Newly created ATCs:

ATC	Description	Tax Rate	Legal Basis
XG071 XG072 XG073	Hybrid Vehicles Over P600,000 to P1,000,000 Over P1,000,000 to P4,000,000 Over P4,000,000	50% of the applicable excise tax rate 50% of the applicable excise tax rate 50% of the applicable excise tax rate	RA No. 10963 and RR No. 5-2018

Modified ATCs to reflect the new excise tax rates:

ATC	Description	Tax Rate	Legal Basis
XG021 XG022 XG023 XG024	Passenger Cars Up to P600,000 Over P600,000 to P1,000,000 Over P1,000,000 to P4,000,000 Over P4,000,000	4% 10% 20% 50%	RA No. 10963 and RR No. 5-2018
XG031 XG032 XG033 XG034	Utility Vehicles Up to P600,000 Over P600,000 to P1,000,000 Over P1,000,000 to P4,000,000 Over P4,000,000	4% 10% 20% 50%	
XG041 XG042 XG043 XG044	Passenger Vans Up to P600,000 Over P600,000 to P1,000,000 Over P1,000,000 to P4,000,000 Over P4,000,000	4% 10% 20% 50%	
XG068	Purely Electric Hybrid Vehicles	Exempt	
XG065	Hybrid Vehicles Up to P600,000	50% of the applicable excise tax rate	

New ATC for fuel marking fees

Revenue Memorandum Order No. 33-2020

October 06, 2020

To properly identify and monitor tax collection of the fuel marking fees in connection with the implementation of Fuel Marking Program (FMP) under RA No. 10963, a new alphanumeric tax code (ATC) was included in BIR Form 0623 (Fuel Marking Fee Form):

Newly created ATCs:

ATC	Description	Legal Basis	BIR Form
NT010	Fuel Marking Fee	RA 10963	BIR Form 0623

New ATC for VAPP

Revenue Memorandum Order No. 34-2020

October 06, 2020

To properly identify and monitor tax collection from Voluntary Assessment and Payment Program (VAPP) in connection with the implementation of RR Mo. 21-2020, the following alphanumeric tax code (ATC) shall be used in BIR Form Nos. 2119 (Voluntary Assessment and Payment Program (VAPP) Application Form) and 0622 (Voluntary Assessment and Payment Program (VAPP) Payment Form):

Newly created ATCs:

ATC	Description	Legal Basis	BIR Form
MC341	On the revenue collected through VAPP: 1. Income Tax, VAT, Percentage Tax, Excise Tax, DST other than DST on ONETT	RR No. 21-2020	BIR Form Nos. 2119 and 0622
MC342	2. FWT (Compensation, FBT, etc.) and CWT other than CWT on ONETT		
MC343	3. Taxes on ONETT, such as estate tax, donor's tax, CGT, ONETT-related CWT/ EWT, and DST		

Procedures to claim refund of erroneously paid VAT on imported drugs prescribed for diabetes, high-cholesterol, and hypertension

Revenue Memorandum Order No. 36-2020

October 15, 2020

Pursuant to Section 204(C) of the Tax Code of 1997, as amended, no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty.

Claims for refund of erroneously paid VAT on importation of drugs prescribed for diabetes, high cholesterol and hypertension included in the Department of Health – Food and Drug Administration (DOH-FDA) approved list from the effectivity of Republic Act (RA) No. 11467 on January 23, 2020 up to July 9, 2020 shall be filed and processed at the respective Revenue District Offices or at the Large Taxpayers Assistance Division under the Large Taxpayers Service where the taxpayer-claimant is registered.

The Revenue Officer/s assigned to receive the documents pertaining to the VAT refund shall ensure that the required documents are complete. The result of the evaluation of the VAT refund/credit claim, approved or otherwise, shall be communicated in writing to the taxpayer immediately after approval of the report by the designated approving BIR Official.

Modified ATC for excise tax on mineral products

Revenue Memorandum Order No. 37-2020

October 15, 2020

To properly identify and monitor tax collection for excise tax on mineral products, in connection with the implementation of RA No. 10963, the following modified ATCs shall be used in BIR Form 2200-M (Excise Tax Return for Mineral Products).

Modified ATCs to reflect the new excise tax rates:

ATC	Description	Tax Rate	Legal Basis
XM010	Coal and Coke Effective January 1, 2018 Effective January 1, 2019	P50/MT P100/MT P150/MT	RA 10963 and RR No. 1-2018

	Effective January 1, 2020 and onwards		
XM020	Non-metallic minerals and quarry resources	4%	
XM030	Copper and other metallic minerals	4%	
XM040	Gold and Chromite	4%	
XM050	Indigenous Petroleum	6%	

SEC MEMORANDUM CIRCULAR

Institutional risk assessment required under AMLA

SEC Memorandum Circular No. 26-2020

September 25, 2020

All SEC covered persons shall conduct an institutional risk assessment as mandated by the Anti-Money Laundering Act (AMLA).

Institutional risk assessment is a comprehensive exercise to identify, assess understand a covered person's money laundering/ terrorist financing (ML/TF) threats, vulnerabilities, and the consequential risks, with a view to mitigate illicit flow of funds and transactions.

In conducting risk assessments, covered persons should consider quantitative and qualitative information obtained from relevant internal and external sources to identify, manage, and mitigate these risks. This may include the National Risk Assessment (NRA) published by the AMLC, the Sectoral Risk Assessment conducted by the Commission, crime statistics, typologies, risk indicators, red flags, guidance and advisories issued by inter-governmental organizations, national competent authorities and the Financial Action Task Force (FATF), and AML/CFT mutual evaluation and follow-up reports by the FATF or associated assessment bodies.

In identifying and assessing indicators of ML/TF risk to which they are exposed, covered persons should consider a range of factors which include:

- The nature, diversity and complexity of its business, products, and target markets;
- The proportion of customers identified as high risk;
- The jurisdictions in which the covered person is operating or otherwise exposed to, either through its own activities or the activities of customers, especially jurisdictions with greater vulnerability due to contextual and other risk factors such as the prevalence of crime, corruption, or financing of terrorism, the general level and quality of the jurisdiction's prosecutorial and law enforcement efforts related to AML/CFT, the regulatory and supervisory regime and controls and transparency of beneficial ownership;
- The distribution channels through which the covered person distributes its products, including the extent to which the securities provider deals directly with the customer and the extent to which it relies (or is allowed to rely) on third parties to conduct customer due diligence (CDD) or other AML/CFT obligations, the complexity of the transaction chain (e.g. layers of distribution and sub-distribution, type of distributors such as independent financial advisors, investment advisors) and the settlement systems used between operators in the payment chain, the use of technology and the extent to which intermediation networks are used;
- The internal and external (such as audits carried out by independent third parties, where applicable) control functions and regulatory findings; and
- The expected volume and size of its transactions, considering the usual activity of the covered person and the profile of its customers.

An AML/CFT Risk Rating System (ARRS) shall be adopted by SEC in the conduct of its on-site examinations of covered persons.

See full text of the memorandum circular for the list of factors that may be considered as indicator of higher risks - country/geographic risk, customer/investor risk, product/service/transaction risk, distribution channel risk, and details of the adoption of ARRS.

Guidelines for the conversion of corporations either to One Person Corporation or to Ordinary Stock Corporation

SEC Memorandum Circular No. 27-2020

October 14, 2020

Ordinary stock corporation (OSC) to One-person corporation (OPC)

The OSC may apply for its conversion into an OPC, by submitting the following documentary requirements, which shall be processed as an Amendment of the Articles of Incorporation:

1. Cover sheet;
2. Application for Conversion of an Ordinary Stock Corporation to a One Person Corporation, signed by the single stockholder who has acquired all of the outstanding shares of the capital stock of an ordinary stock corporation and countersigned by the corporation's corporate secretary in the form prescribed by the Commission;
3. Original or certified true copy of the document/s effecting the transfer/s of full title / ownership of shares (i.e.: deeds of assignment, or any legal document transferring the shares to the single stockholder) and, if applicable, a certified true copy of proof of authority to act on behalf of the trust/estate;
4. Certificate Authorizing Registration / tax clearance from the BIR;
5. Notarized Secretary's Certificate of No Intra-Corporate Dispute;
6. Articles of Incorporation of an OPC

The Articles of Incorporation of the One Person Corporation shall include below provision:

"Upon issuance by the Securities and Exchange Commission of the Certificate of Filing of Amended Articles of Incorporation, reflecting its conversion into a One Person Corporation, the attached Articles of Incorporation of the Ordinary Stock Corporation shall be deemed superseded."

7. Letter of acceptance of appointment by Nominee and Alternate Nominee;
8. Self-appointed Treasurer's Bond, if applicable;
9. Name reservation;
10. Monitoring clearance from other relevant department of the SEC or from the Compliance Monitoring Division (CMD) of the Company Registration and Monitoring Department (CRMD), whichever is applicable;
11. Endorsement clearance from appropriate government agencies, if applicable;
12. Undertaking to Change in Corporate Name duly executed under oath by the single stockholder or the sole remaining director, if not yet included in the Articles of Incorporation; and
13. Undertaking to Assume All Liabilities of the Ordinary Stock Corporation, duly executed under oath by the single stockholder of the OPC, if not yet included in the Articles of Incorporation.

The date of issuance of the Certificate of Filing of Amended Articles of Incorporation shall be deemed as the date of approval of the conversion. The corporation's original SEC Registration Number shall be retained in the Certificate of Filing of Amended Articles of Incorporation. Meanwhile, the name of the corporation shall have an "OPC" suffix in order to reflect its nature as an OPC.

One-person corporation (OPC) to ordinary stock corporation (OSC)

On the other hand, When the shares in an OPC ceases to be held solely by a single stockholder, the OPC may be converted into an OSC after due notice to the SEC of such fact/s and of such circumstance/s leading to the conversion, and after compliance with all the requirements for a stock corporation, as may be determined by the SEC, after an evaluation of the following documentary requirements:

1. Cover sheet;
2. Notice of Conversion of a One Person Corporation into an Ordinary Stock Corporation, signed by all holders of shares of the outstanding capital stock, countersigned by the corporate secretary in the form prescribed by the Commission;
3. Original or certified true copy of the document/s effecting the transfers of full title / ownership of shares (*i.e. subscription contracts, deeds of assignment, or any legal document declaring the legal heirs of the single stockholder*);
4. Certificate Authorizing Registration / tax clearance from the BIR;

5. Articles of Incorporation and Bylaws of an OSC filed in accordance with the requirements provided under Section 14 of the RCC.

The following shall likewise be added as a new Article in the Articles of Incorporation of the Ordinary Stock Corporation -

"Upon issuance by the Securities and Exchange Commission of the Certificate of Filing of Amended Articles of Incorporation and of Bylaws of this corporation, reflecting its conversion into an Ordinary Stock Corporation, the attached Articles of Incorporation of the One Person Corporation shall be deemed superseded."

A copy of the latest Articles of Incorporation of the OPC shall be attached to the Articles of Incorporation of the OSC.

6. Name reservation;
7. Monitoring clearance from other relevant department of the SEC or from the CMD of the CRMD, whichever is applicable;
8. Endorsement clearance from appropriate government agencies, if applicable;
9. Undertaking to Change Corporate Name duly executed under oath by the authorized representative or director of the OSC, if not yet included in the Articles of Incorporation, and;
10. Undertaking to Assume All Liabilities of the One Person Corporation, duly executed under oath by all the stockholders of the OSC, if not yet included in the Articles of Incorporation.