**TMAP TAX UPDATES**

April 16 to May 15, 2021

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**Court of Tax Appeals Decisions**

**VETAS SERVICES PHILIPPINES, INC. V. COMMISSIONER OF INTERNAL REVENUE. CTA CASE NO. 9554. May 19, 2021**

This is a Motion for Reconsideration (“MFR”) from the Decision of the Court of Tax Appeals (“CTA”) denying petitioner’s Petition for Review for insufficiency of evidence. In essence, the taxpayer argues that its sales to the Energy Development Corporation (“EDC”) is subject to zero percent value-added tax (VAT) under Section 108(8)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, and that Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (“REA”), does not require a Certificate of Endorsement issued by the Department of Energy (“DOE”), on a per transaction basis, for the imposition of zero percent VAT rate on the Renewable Energy(“RE”) developer’s (*i.e.* EDC) local purchases of goods, properties and services. Further, taxpayer argues that while Section 18(C) of the Implementing Rules and Regulations of REA (“REA-IRR”) requires RE developers to secure a Certificate of Endorsement from the DOE, this requirement is only applicable for certain incentives. Lastly, petitioner posits that Section 18(C) of REA-IRR appears to have been issued merely to implement Section 26 of REA.

The CTA denied the MFR. CTA enunciated that there is no basis to argue that the submission of the Certificate of Endorsement is only applicable to certain incentives. Further, it is evident that Section 18 (C), REA-IRR makes no distinction as to what type of incentive it applies. Contrary to petitioner's allegation, Section 18 (C), REA-IRR does not appear to have been issued merely to implement Section 26, REA. The RE developer's Certificate of Endorsement issued by the DOE *is a condition for the entitlement to the incentives and other privileges under REA.*

*Thus, in order to avail the incentives under REA, i.e. VAT zero-rating, it must be shown that a Certificate of Endorsement was issued by the DOE to the RE developer.*

**DONATO C. CRUZ TRADING CORP V. COMMISSIONER OF INTERNAL REVENUE. CTA CASE NO. 9721. May 19, 2021**

Petitioner was assessed by Bureau of Internal Revenue (“BIR”) with deficiency expanded withholding tax (“EWT”) for taxable year (“TY”) 2006.

Petitioner assailed the assessment on the following grounds: (1) the letter of authority (“LOA”) did not bear the BIR's dry seal; (2) the taxpayer did not receive the Notice of their Designation (“NTD”) as a top 10,000 corporation; and (3) assuming argued that it received the NTD, it cannot be liable for EWT on its income payments to its agricultural suppliers of goods for TY 2006 pursuant to Revenue Regulations (“RR”) No. 3-2004 which it claimed to have suspended the 1% withholding tax on income payments to suppliers of agricultural products; and (4) Revenue Memorandum Circular (“RMC”) No. 44-2007 issued in July 2007 is merely an interpretative regulation and thus, cannot be applied retroactively in TY 2006.

The CTA ruled that the taxpayer was liable for deficiency EWT.

*First,* a perusal of the LOA would show that it is compliant with all of the jurisprudential requisites. Nowhere in BIR’s issuances and in existing jurisprudence is there any mention of a requirement that the LOA must bear a dry seal to be valid. Further, although the LOA itself states that it shall not be valid if the dry seal of the BIR is not present, it is clear that the Regional Director (“RD”) himself had signed it. Assuming for the sake of argument that the BIR's dry seal is salient in the LOA's validity, the CTA held that the BIR's seal conspicuously printed and placed beside the RD' s signature is sufficient.

*Second,* petitioner cannot argue that the person who received the NTD lacked authority to receive the same pursuant to the Rules of Court as these only applies to service of summons by the courts. Moreover, not once did petitioner allege in its protest or in its appeal that Bullahan did not inform its management of the said notice. Petitioner merely disputes Bullahan's authority to receive such notices. Thus, it may be presumed that a letter duly sent by the BIR to the taxpayer is received by the latter in the ordinary course of mail.

*Third,* petitioner is obliged to withhold as a duly notified top 10,000 private corporation. As it stands, RR 3-2004 rendered temporarily inoperative Section 2.57.2(S) of RR 2-98, as amended. In herein case, considering that petitioner is engaged in the business of selling fertilizer /feeds products, *prior to the effectivity of RR 3-2004*, its payments to regular agricultural suppliers fall under Section 2.57.2(S) of RR 2-98, as amended, and are subject to 1% EWT.

*Fourth,* RMC 44-2007 is not merely an interpretative regulation. A careful perusal of RMC 44-2007 would show that the circular merely reiterates and clarifies the effect of RR 3-2004, i*.e.,* the suspension of the implementation of Section 2.57.2(S) ofRR 2-98, as amended. Clearly, when an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a preexisting law. RMC 44-2007, therefore, was issued merely to construe the existing provisions of the NIRC of 1997, as amended, in relation to the various types of withholding tax at source. The Circular was not issued or intended to impose additional tax burdens not otherwise found in the law nor in existing regulations.

**MEDICAL CENTER TRADING CORPORATION V. COMMISSIONER OF INTERNAL REVENUE. CTA CASE NO. 9412. MARCH 22, 2021**

Respondent Commissioner of Internal Revenue (“CIR”) filed a Motion for Reconsideration (“MFR”) questioning the CTA’s earlier decision cancelling petitioner’s deficiency taxes for taxable year ended December 31, 2009.

CIR argued that the CTA erred in ruling that (a) the assessments were issued beyond the period to assess; (b) the absence of an eLOA in the present case invalidates the tax assessments; and (c) assessments are void due to the alleged absence of definite tax liability and due date in the Formal Letter of Demand (“FLD”) and Final Assessment Notice (“FAN”).

The CTA denied CIR’s MFR.

*First,* the waiver executed by taxpayer is void because it failed to indicate the kind and exact amount of the taxes to be assessed or collected. Considering that the petitioner received the FLD and FANs beyond the three-year prescriptive period under the NIRC, the assessments are void due to prescription.

*Second,* RMO No. 69-10 is clear that all LOAs from March 1, 2020, whether issued manually or electronically covering cases for 2009 and other taxable years are subject to retrieval and replacement with the new eLOA form. Consequently, a revenue officer's authority to continue the said audit/investigation shall be done only when such retrieval and replacement have been made. In the present case, there is no showing that the present LOA, which was issued on May 14, 2010, has been retrieved and replaced by an eLOA. As such, the revenue officers named in the said LOA, and any other BIR personnel who examined petitioner, were not authorized through an eLOA to proceed with the tax audit.

*Third,* the tax assessments were void. Specifically, the FLD did not indicate a date and only contained the following statements: (a) “Please take note that the interest will have to be adjusted if paid beyond the date specified therein.”; and (b) “In view thereof, you are requested to pay your aforesaid deficiency tax liabilities using the BIR Payment Form (BIR Form 0605) through eFPS within the time shown in the enclosed assessment notice.” Moreover, while the FLD provides for the computation of petitioner's tax liability, the amount, however, remains indefinite as it states that the total amount of tax due is still subject to adjustment. The FAN also shows that the spaces for the due dates were left blank.

**Bureau of Internal Revenue - Revenue Regulations**

**REVEUE REGULATIONS NO. 6-2021 – PRESCRIBING THE ADDITIONAL GUIDELINES FOR IMPLEMENTING THE TAX PROVISIONS OF PERA ACT OF 2008 EFFECTIVELY AMENDING PERTINENT PROVISIONS OF REVENUE REULATIONS NO. 17-2011** **April 31, 2021.**

These regulations are issued to prescribe additional guidelines for implementing the tax provisions of R.A. No. 9505, otherwise known as the Personal Equity and Retirement Account (“PERA”) Act of 2008.”

The regulations provided for the list of reports (attached as Annexes) that shall be submitted by the PERA Administrators through the PERASys.

The PERA-Tax Credit Certificate (“TCC”) shall refer to the document evidencing the amount of tax credit equivalent to 5% of the total amount of the qualified PERA contributions made in a year. The application for PERA-TCC shall be filed through the PERASys by the PERA Administrator within 60 days from the close of the calendar year. The PERA-TCC shall be readily accessible PERASys for issuance to their respective contributors. It shall be printed upon requested by the qualified contributor.

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, it can be used for payment of any internal revenue taxes. The PERA-TCC shall be surrendered and attached to the applicable tax returns.

The penalties of 5% and 20% for early withdrawal of qualified contributions under RR No 10-2016 shall be deducted by the PERA administrator from the PERA account.

**Bureau of Internal Revenue – Revenue Memorandum Circulars**

**REVEUE MEMORANDUM CIRCULAR NO. 54-2021 - CLARIFIES CERTAIN PROVISIONS OF REVENUE REGULATION (RR) NO. 34-2020**. **April 27, 2021.**

A taxpayer is required to file BIR Form No. 1709 (“RPT Form”) if it satisfies the following conditions: (1) it is required to file an Annual income Tax Return (“AITR”); (2) it has transactions with domestic and foreign related party during the concerned taxable period; and (3) it falls under any of the following categories: (i) large taxpayers; (ii) taxpayers enjoying tax incentives or subject to preferential income tax rates; (iii) taxpayers reporting net operating losses for the current taxable year and the immediate preceding two (2) consecutive taxable year; or (iv) a related party that has transactions with (i), (ii), and (iii).

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 a set criteria prescribed in Revenue Regulation (“RR”) No. 1-1998.

International carriers, though subject to preferential rate under the Tax Code, is not required to file an RPT if they are either subject to tax based on their Gross Philippine Billings or gross revenues, including those who are exempt from tax under tax treaties or on the basis of reciprocity.

Taxpayers operating within the economic zone are are not required to file an RPT Form. However, if the taxpayer falls under Section 2(a), 2(c), or 2(d) RR No. 34-2020, then it is required to file an RPT Form.

Taxpayers who are exempt from income tax under Section 30 of the NIRC or similar provisions, regional or area headquarters, representative offices of foreign corporations, and post-employment benefit plans are not required to file an RPT Form.

The net operating losses for income tax purposes should be the basis and not the amount reflected in the Audited Financial Statements.

Registration fees, business permits and licenses, and taxes, except those enumerated under Section 34(C)(1) of the NIRC are allowable deductions and should be considered in computing the net operating loss.

The materiality threshold is only relevant in determining who are required to prepare Transfer Pricing Documentation (“TPD”). A taxpayer who is required to file an RPT Form must disclose all related party transactions irrespective of the amount.

In filing out the RPT Form, if possible, similar transactions with the same related party must be aggregated.

The TPD and other supporting documents shall no longer be attached to the RPF Form, but shall be made available during audit.

A reasonable estimate of the related party transaction is insufficient. No less than the actual amounts of the related party transactions shall be declared in the RPT Form, as it contains a perjury clause whereby the taxpayer or its duly authorized representatives attests to the truthfulness of the facts stated therein.

The filing of 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.

If the taxpayer is not required to file the RPT Form, then it is also not mandated to prepare a TPD even if it satisfies the materiality threshold.

The following taxpayers are required to prepare a TPD: (a) those with annual gross sales/revenue for the subject taxable period exceeding Php 150,000,000 and the total amount of related party transactions with foreign and domestic related parties exceed Php 90,000,000; (b) sale of tangible goods involving the same related party exceeding Php 60,000,000; (c) service transaction, payment of interest, utilization of intangible goods or other related party transaction involving the same related party exceeding Php 15,000,000 within the taxable year; or (d) if TPD was required to be prepared during the immediately preceding taxable period for exceeding (a) to (c).

The annual gross sales or revenues 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 of to the transaction.

In computing the total amount of related party transactions with foreign and domestic related parties, the following items shall be totalled: (a) amounts received and/or receivable from related parties during the taxable year; (b) amounts paid and/or payable to related parties during the taxable year; and (c) outstanding balances of loans and non-trade amounts due from/to all related parties. Any compensation paid to key management personnel, dividends, and branch profit remittances shall not be included in the computation.

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.

If the taxpayer fails to provide any material information, BIR will regard the RPT Form as not duly filed and the penalty for failure to file such information return will be imposed.

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

Through the RPT Forms submitted, the BIR will conduct an initial transfer pricing risk assessment.

The Advance Pricing Agreement must be approved by the BIR before the covered related party transaction is exempted from the disclosure in the RPT Form.

Taxpayers who are not required to file an RPT Form and have already finalized their AFS for taxable year 2020 prior to the effectivity of RR No. 34-2020 are not expected to comply with the mandate of Section 4 thereof, and cannot, be penalized for non-disclosure.

**REVEUE MEMORANDUM CIRCULAR NO. 55-2021 – CIRCULARIZING THE UPDATED LIST OF BIR FORMS AND ITS VAIALBILITY. April 5, 2021.**

This circularized the updated list of BIR Forms and their availability.

**REVEUE MEMORANDUM CIRCULAR NO. 56-2021 – CIRCULARIZING THE IMPLEMENTING RULES AND REGULATIONS (“IRR”) OF SECTION 4(NNN) OF REPUBLIC ACT 11494, OTHERWISE KNOWN AS “THE BAYANIHAN TO RECOVER AS ONE ACT.” May 3, 2021.**

This circularized the Implementing Rules and Regulations of Section 4 (nnn) of Republic Act No. 11494, otherwise known as the “Bayanihan to Recover as One Act,” promulgated by the Department of Trade and Industry, Department of Finance, and Department of Environment and Natural Resources.

**REVEUE MEMORANDUM CIRCULAR NO. 57-2021 – CIRCULARIZING Republic Act No. 11523 (An Act Ensuring Philippine Financial Industry Resiliency Against the COVID-19 Pandemic). May 3, 2021.**

This circularized Republic Act No. 11523, also known as “An Act Ensuring Philippine Financial Industry Resiliency Against the COVID-19 Pandemic.”

**REVEUE MEMORANDUM CIRCULAR NO. 58-2021 – CIRCULARIZING Republic Act No. 11521 (An Act Further Strengthening the Anti-Money Laundering Law, Amending for the Purpose Republic Act No. 9160, Otherwise Known as the ‘Anti-Money Laundering Act of 2001’, as Amended). May 3, 2021.**

This circularized Republic Act No. 11521, An Act Further Strengthening the Anti-Money Laundering Law, Amending for the Purpose Republic Act No. 9160, Otherwise Known as the ‘Anti-Money Laundering Act of 2001’, as Amended.

**REVEUE MEMORANDUM CIRCULAR NO. 59-2021 – Consolidated Price of sugar at Millsite fbo the Month of March 2021. May 14, 2021.**

This circularized the Consolidated Price of Sugar at Millsite for the month of March 2021.

**Bureau of Internal Revenue – Revenue Memorandum Orders**

**REVENUE MEMORANDUM ORDER NO. 15-2021 – ALL REVENUE OFFICIALS AND EMPLOYEES CONCERNED REGARDING BIR’S MENTAL HEALTH PROGRAM.** March 25, 2021.

This was promulgated pursuant to Republic Act No. 11036, otherwise known as the “Mental Health Act of 2018” and its Implementing Rules and Regulations.

**Bureau of Internal Revenue – Rulings**

**BIR RULING NO. VAT-041-21, February 26, 2021.** This is a request for ruling on whether 2GO Group, Inc.’s (“2GO”) importation of a cargo vessel named “Stena Nova” is exempt form value-added tax (“VAT”) pursuant to Section 109(1)(T) of the NIRC. 2GO is a domestic corporation which is duly accredited by the Maritime Industry Authority (“MARINA”) to engage in domestic shipping business. The BIR ruled that pursuant to Section 109(1)(T) of the NIRC and Section 4.109-1 (B)(1)(t) of RR No. 16-2005, importation of cargo vessels destined for domestic transport operations shall be exempt from VAT. Hence, the importation of 2GO of Stena Nova shall be exempt from VAT. However, the VAT exemption shall be subject to the requirements on restrictions on vessel importation and mandatory vessel retirement program of MARINA.

**BIR RULING NO. VAT-063-21, March 3, 2021.** This is a request for ruling on whether the services of Viero Loadworks, Inc. (“Viero”) to the Quezon City Government may be exempt from value-added tax (“VAT”). Quezon City procured the services of Vireo relative to the utilization of the latter’s project named Innovative Artificial Intelligence (“AI”) and Information and Communications Technology (“ICT”) which provided a system that helped mitigate the spread of COVID-19. The BIR ruled that there is nothing in R.A. No. 11439 or NIRC that exempts transactions involving ICT services from VAT during the pandemic. Thus, the payment of VAT is mandatory.

**BIR RULING NO. JV-056-21, March 22, 2021.** This is a request for ruling on whether the joint venture between First Balfour, Inc. and MRAIL, Inc. (“First-Balfour-MRAIL JV”), formed for the purpose of undertaking the *Rehabilitation of the LRT Line 1 Rectifier Substations* (“JV Project”), is exempt from the 2% creditable withholding tax pursuant to RR No. 14-2002, as amended by RR No. 11-2018. The BIR held that pursuant to Section 22(B) of the National Internal Revenue Code (“NIRC”), the term “corporation” does not include joint ventures formed for the purpose of undertaking construction projects. Likewise, Section 2.57.2(5) of RR No. 2-98 and Section 3 of RR No. 10-2012 both state that joint ventures formed for the purpose of undertaking construction projects shall not be taxable as a corporation, provided that they comply with certain requirements, namely: (1) should involve joining or pooling of resources by licensed local contractors that is, licensed as general contract by the Philippine Contractors Accreditation Board (“PCAB”) of the Department of Trade and Industry; (2) the local contractors are engaged in construction business; and (3) the joint venture itself must likewise be duly licensed as such by PCAB. Such being the case, the First-Balfour-MRAIL JV is considered a joint venture not taxable as a corporation for complying with the foregoing conditions, and the gross payment thereof on the JV Project are likewise not subject to 2% creditable withholding tax.

**Bureau of Internal Revenue – Advisories**

**ADVISORY ON THE FILING OF AMENDED INCOME TAX RETURNS (“AITR”)FOR TAX PERIOD ENDING DECEMBER 31, 2020 – April 28, 2021**

Attachments to the electronically filed amended AITRs shall be submitted on or before May 30, 2021 to the Revenue District Office where the taxpayer is registered or through the Electronic Audited Financial Statement System.

Attachments to the tentative AITR electronically filed on or before April 15, 2021 shall be made on or before May 30, 2021.

Taxpayers who submitted the attachments to the AITR but will amend the their returns because of changes in the tax rates do not need to submit re-submit the same documents. But taxpayers amending their AITR for reasons other than correction of AITR shall submit the required documentary attachments on or before May 30, 2021.

Note: Taxpayers shall not be penalized for not submitting attachments to filed AITR but later amended on or before May 15, 2021.

**ADVISORY FOR MANDATED USERS OF EBIRFORMS RE-INCOME TAXES WITHHELD -- April 29, 2021**

Since the corresponding adjustments to BIR Form No. 1601-FQ in eBIRForms Packagev7.9 cannot be completed before April 30, 2021, the BIR mandated users of said electronic form to use Payment Form No.0605 in paying final taxes due.

**Bureau of Customs – Administrative Order**

**CUSTOMS ADMNISTRATIVE ORDER NO. 01-2021. SECURITY TO GUARANTEE PAYMENT OF DUTIES AND TAXES AND OTHER OBLIGATIONS. January 31, 2021.**

Customs Administrative Order No. 01-2021 (“CAO 01-2021”) was issued to implement Sections 1506 and 1507 of R.A. No. 10863, otherwise known as the Customs Modernization and Tariff Act (“CMTA”). This shall apply to all forms of security required to guarantee the payment of duties and taxes and other obligations for provided under the CMTA and other existing rules.

*General Provisions:*

1. Any party required to provide security to guaranty the payment of duties and taxes and other obligations may choose form any of the following forms of security: (a) cash bond; (b) standby letter of credit or irrevocable letter of credit; (c) surety bond; and (d) any other acceptable forms of security such as written commitment in case of low risk and/or low value goods.
2. The required security shall be the lowest possible and shall not exceed the imposable duties, taxes, and other charges.
3. The District Collector may accept a one-time general security extend over such period of time and covering such transactions of the party in question.
4. General Security is acceptable: (a) only from declarants who regularly declare goods at different offices in customs territory and the District Collector is satisfied that the obligation to the Bureau of Customs (“Bureau”) will be fulfilled; and (b) to cover for duties and taxes due on lost or damaged goods while in transit or stored inside and off-dock or off-terminal customs facilities and warehouses
5. In cases where request for extension to re-export or pay duties taxes and other charges is allowed, the application must be received by the Bureau at least 3 working days prior to the expiration of the original period to re-export, with the security attached.
6. The security shall be cancelled immediately once the obligations secured have been satisfied.

*When Security is Required*

1. Release of shipment under provisional goods declaration
2. Release of goods pending ascertainment of the accuracy of the declared value and classification. However, prohibited goods shall not be released under any circumstance.
3. Release of express shipments of accredited air express cargo
4. Goods declared in the entry for warehousing in customs bonded warehouses
5. Imported goods transported by carriers placed under custom transit from a port of entry to other ports, including Free Zones (special economic zones registered with the Philippine Economic Zone Authority)
6. Transit of Goods under Co-loading Act
7. Release of conditionally tax and/or duty-free importations
8. Conditional release of shipments of returning residents or returning Overseas Filipino Workers arriving in advance
9. Release of traveler’s accompanied baggage with dutiable goods which are intended for re-exportation

*Treatment of Securities: (a) Cash; (b) Standby Letter of Credit or Irrevocable Letter of Credit; and (c) Bonds*

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| ***Security*** | ***(a) assessment in favor of government; (b) failure of the importer to comply with the conditions of the security; or (c) final decision arising from a dispute settlement in favor of Government*** | ***(a) assessment in favor of importer; (b) satisfaction of the conditions of bond; or (c) final decision arising from a dispute settlement in favor of importer*** |
| ***Cash***  - *shall be deposited immediately not later than the day following the date when received in a Trust Fund Account to be managed by the Bureau* | 1. The taxes due shall be forfeited to the General Fund.  2. If there is any excess, it shall be released to the imported in the form of a cheque issued by the Bureau  3. If the bond is less than the amount due, a demand letter shall be issued for the balance.  The District Collector shall recommend to the Commission through the Legal Service a court of action to ensure payment of obligation. | The amount shall be released to the importer in the form of a check issued by the Bureau. |
| ***Standby Letter of Credit or Irrevocable Letter of Credit***  *- May only be issued by Authorized Agent Banks* | The amount stated in the Standby Letter of Credit or Irrevocable Letter of Credit shall be immediately settled by the bank upon notice of the District Collector, without need of demand against importer. | The Standby Letter of Credit or Irrevocable Letter of Credit shall be cancelled. |
| ***Bond***  *- May only be issued by surety companies granted Authority to Transact Business as Surety (“ATBAS”) Company by the Bureau* | The Chief of Bonds Division or equivalent office shall cause the issuance of a demand letter addressed to the importer and surety company be signed by the District Collector  The District Collector shall recommend to the Commission through the Legal Service a court of action to ensure payment of obligation. | The surety bond shall be cancelled. |

*Requirements for ATBAS*

1. Applications or renewal of surety companies shall be filed with and processed by the Bonds Division of the port where the surety companies wisht to be accredited at least 15 working days before the start of the quarter applied for, reviewed by the Collection Service, and upon the latter’s recommendation shall be approved by the District Collector within 7 working days from the submission of the complete documents.
2. Only surety companies in good standing with the Bureau shall qualify for ATBAS
3. The accreditation as ATBAS shall be food and effective for a period of one quarter, renewable every quarter.

*Penalties for Breach of Bonds*

Temporarily admitted goods re-exported beyond the prescribed period shall be subject to the following penalties:

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| ***Date*** | ***Penalty*** |
| Up to 30 days from the date of expiration of the bond to date of actual exportation or payment of duties and taxes | Php 5,0000 or 2% of the collectible duties and taxes whichever is higher, plus a surcharge of 10% of the total collectible duties, taxes and other charges, which surcharge shall be increased to 25% if the delinquency lasts for more than one yar |
| Beyond 30 days to one year from the date of expiration of the bond to date of actual exportation and payment of duties and taxes | Php 10,000 or 10% of the collectible duties and taxes whichever is higher, plus a surcharge of 10% of the total collectible duties, taxes, and other charges |
| Beyond 1 year form the date of expiration of the bond to date of actual exportation or payment to duties and taxes | Php 10,000 or 20% of the collectible duties and taxes whichever is higher, plus a surcharge of 25%. |

**Securities and Exchange Commission – Opinion**

**SEC-OGC OPINION NO. 21-05. RE: INCREASE OF AUTHORIZED CAPITAL STOCK; REGISTRATION OF SHARES OF STOCK TO BE ISSUED THEREFOR. May 7, 2021.** This is a request for an opinion on whether the additional shares of stock that may be issued as a consequence of the increase in authorized capital stock (“ACS”) of the corporation which is subject to the stockholder’s pre-emptive rights need to be registered pursuant to the Securities Regulations Code (“SRC”). Specifically, the corporation’s ACS increased from Php100 Million to Php250 Million, increasing the number of shares from 50,000 to 125,000 at a par value of Php 2,000 per share. Further, the corporation is planning to include in the shares to be issued relative to the exercise of the stockholder’s pre-emptive rights, certain medical benefits which effectively increased the par value of each share from P2,000to P3,500. The SEC held that while the securities are not exempt securities under Section 9, SRC the sale of unissued shares and sale from increase in authorized capital stock of a corporation are *exempt transactions* where the requirement of registration does not apply pursuant tot to Section 10 of the SRC.

We note, however, that despite the such exemption from the registration requirement under the SRC, the original issuance of the shares pursuant to the increase of capital stock shall still be subject to documentary stamp taxes.